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14 CITY OF BANNING and SHERI FLYNN

15  
16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION  
18

19 SUN LAKES HIGHLAND, LLC, a  
Delaware limited liability company,

20 Petitioner and Plaintiff,

21 v.

22 CITY OF BANNING, a municipal  
23 corporation; SHERI FLYNN, an  
individual; and DOES 1 through 10,  
24 inclusive,

25 Respondents and  
26 Defendants.

Case No. 5:24-cv-02603-DTB

VOLUME 4 PART 11 OF THE  
ADMINISTRATIVE RECORD OF  
PROCEEDINGS

Date: May 29, 2025 (Off Calendar)  
Time: 10:00 a.m.  
Crtrm.: 4  
Judge: Hon. David T. Bristow

Action Filed: December 6, 2024  
Second Amended Petition Filed: March  
31, 2025

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2.

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Article from each and every sub-contractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's sub-contractor, its officers, agents, servants, employees, sub-contractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant's sub-contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Consultant's indemnifications and obligations under this Article, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Article shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Consultant's indemnifications and obligations under this Article shall survive the expiration or termination of this Agreement.

## **ARTICLE 5. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **5.1 Service Records.**

Consultant shall keep, and require sub-contractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and Services performed hereunder (the "Service Records"), as shall be necessary to perform the Services required by this Agreement and enable the Contract Officer

to evaluate the performance of such Services. Any and all such Service Records shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such Service Records at all times during normal business hours of City, including the right to inspect, copy, audit and make copies and transcripts from such Service Records. Such Service Records shall be maintained for a period of three (3) years following completion of the Services hereunder, and City shall have access to such Service Records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the Service Records may be given to City, and access shall be provided by Consultant's successor in interest ("Consultant's Successor"). If custody of the Service Records is given to Consultant's Successor, Consultant shall give written notice to City of the transfer of the Service Records to Consultant's Successor. The notice shall include contact information (address and telephone number) for Consultant's Successor, and access shall be provided to City by Consultant's Successor.

## 5.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that City is greatly concerned about the cost of Services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the Services contemplated herein, Consultant shall promptly notify the Contract Officer of that fact, circumstance, technique or event and the estimated increased or decreased cost related thereto.

## 5.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "Consultant Documents") prepared by Consultant, its employees, sub-contractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement. Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the Consultant Documents hereunder. Any use, reuse or assignment of such completed Consultant Documents for other projects and/or use of uncompleted Consultant Documents without specific written authorization by Consultant will be at City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use or assignment. Consultant may retain copies of such Consultant Documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All sub-contractors shall provide for assignment to City of all Consultant Documents prepared by them; and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

## 5.4 Confidentiality and Release of Information.

A. All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the

public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

B. Consultant, its officers, employees, agents or sub-contractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the Services performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives City notice of such court order or subpoena.

C. If Consultant, or any officer, employee, agent or sub-contractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys’ fees, caused by or incurred as a result of Consultant’s conduct.

D. Consultant shall promptly notify City should Consultant, its officers, employees, agents or sub-contractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any Party regarding this Agreement and the Services performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite the response.

## **ARTICLE 6. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **6.1 California Law.**

This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

### **6.2 Disputes; Default.**

A. In the event that City determines Consultant is in default under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any Services performed after the date of default. In addition to the provisions of Section 4.8, and the right to terminate pursuant to Section 6.7, if the City Manager determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, City may serve Consultant with written notice of the default. Consultant shall have ten (10) calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance.



In the event that Consultant fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

B. In the event of termination pursuant to this Section, City may take over the Services and prosecute the same to completion by contract or otherwise, and Consultant shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Consultant for the purpose of set-off or partial payment of the amounts owed City as provided in Section 6.3.

#### 6.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement): (i) any payment amount of which may be in dispute hereunder or which is necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, (ii) all amounts retained pursuant to the provisions of Section 4.8, (iii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement, and (iv) all payments due or that become due to Consultant during the period that Consultant or any of its sub-contractors fail to maintain any required insurance in full force and effect, until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City, as provided in Section 4.9, above. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of Consultant to insure, indemnify, and protect City as elsewhere provided herein.

#### 6.4 Waiver.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any Services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing, and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### 6.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party

of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

6.6 Legal Action.

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant must file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action against City under this Agreement.

6.7 Termination Prior to Expiration of Term.

This Article 6 shall govern any termination of this Agreement except as specifically provided in Section 6.2 for termination for default of Consultant. City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of Consultant, the period of notice may be a shorter time as may be determined by the Contract Officer. In addition, Consultant reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of City, the period of notice may be a shorter time as Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all Services hereunder except such as may be specifically approved by the Contract Officer. Except where Consultant has initiated termination, Consultant shall be entitled to compensation for all Services rendered prior to the effective date of the notice of termination and for any Services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 6.3. In the event Consultant has initiated termination, Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 6.2.

6.8 Attorneys' Fees.

In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorney's fees on any appeal, and in addition the Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

## **ARTICLE 7. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

### **7.1 Non-liability of City Officers and Employees.**

No officer or employee of City shall be personally liable to Consultant, or Consultant's Successor, in the event of any default or breach by City or for any amount which may become due to Consultant or Consultant's Successor, or for breach of any obligation of the terms of this Agreement.

### **7.2 Conflict of Interest.**

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of Services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or sub-contractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of City shall have any direct or indirect financial interest in this Agreement within the scope of Government Code section 1090, nor shall any such officer or employee make, participate in making, or use his or her official position to influence, any City decision relating to the Agreement which has a material financial effect on his or her financial interests or the financial interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any State statute or regulation. Consultant warrants that it has not paid or given, and will not pay or give any third party any money or other consideration for obtaining this Agreement.

Consultant and its officers, employees, associates and sub-contractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar services for other clients; but Consultant and its officers, employees, associates and sub-contractors shall not, without the Contract Officer's prior written approval, perform services for another person or entity for whom Consultant is not currently performing services that would require Consultant or one of its officers, employees, associates or sub-contractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this Section into any subcontract that Consultant executes in connection with the performance of this Agreement.

### **7.3 Covenant Against Discrimination.**

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed, and that employees

are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry, or other protected class.

7.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of Services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

**ARTICLE 8. MISCELLANEOUS PROVISIONS**

8.1 Notices.

Any notice, demand, request, document, consent, approval, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on confirmed delivery by courier service or overnight delivery service during Consultant's and City's regular business hours; or (b) three (3) Business Days after deposit in the United States mail, by certified or registered mail, and addressed to the Party to be notified as set forth below:

If to City

Attn: Lincoln Bogard  
Deputy City Manager  
City of Banning  
99 East Ramsey Street  
Banning, California 92220  
Email: lbogard@banningca.gov

With a courtesy copy to:

Serita R. Young, City Attorney  
Richards, Watson & Gershon  
350 South Grand Avenue, 37th Floor  
Los Angeles, California 90071  
Email: SYoung@rwglaw.com

If to Consultant:

Attn: Ray Bollhauer  
President  
American Legal Publishing, LLC  
525 Vine Street, Suite 310  
Cincinnati, OH 45202  
Email: rbollhauer@amlegal.com

8.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

8.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

8.4 Integration; Amendment.

This Agreement, and all exhibits referred to in this Agreement, constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. No amendment to or modification of this Agreement, nor any provision or breach hereof waived, shall be valid unless made in writing and approved by Consultant and by City Council. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

8.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

8.6 Mutual Cooperation.

A. City's Cooperation. City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for Consultant's proper performance of the Services required under this Agreement.

B. Consultant's Cooperation. In the event any claim or action is brought against City relating to Consultant's performance of Services rendered under this Agreement, Consultant shall render any reasonable assistance that City requires.



8.7 No Third Party Beneficiaries Intended.

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

8.8 Final Payment Acceptance Constitutes Release.

The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished or relating to Consultant's Services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, sub-contractors and agents for the accuracy and competency of the information provided and/or Services performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the Services prepared by Consultant, its employees, sub-contractors and agents.

8.9 Non-Appropriation of Funds.

Payments to be made to Consultant by City for Services performed within the current fiscal year which are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Consultant's Services beyond the current fiscal year, this Agreement shall cover payment for Consultant's Services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

8.10 Headings.

The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

8.11 Word Usage.

Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

8.12 Business Days.

"Business Days" refers to days that the Banning City Hall is open for business.

8.13 Corporate Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that (i): such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver

this Agreement on behalf of that Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which that Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

8.14 Electronic Signatures.

Each Party may adopt as its signature an electronic identification consisting of a symbol or code that is affixed to or contained in each document transmitted by such Party (“electronic signature”). The Parties hereto hereby agree that electronic signatures are acceptable, shall have the same force and effect under the law as original wet signatures, and shall be sufficient to verify that the Parties have executed this Agreement and such other documents transmitted by the Parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF BANNING

CONSULTANT

Douglas Schulze, \_\_\_\_\_ Date  
City Manager

NAME: \_\_\_\_\_ Date \_\_\_\_\_

TITLE: \_\_\_\_\_

NAME: \_\_\_\_\_ Date \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST:

Caroline Patton  
Administrative City Clerk

Tax ID No.

Address:

APPROVED AS TO FORM:  
Richards, Watson & Gershon

City Council Approval: \_\_\_\_\_

Serita R. Young City Attorney	Date
----------------------------------	------

**NOTE: PROOF OF AUTHORITY TO BIND CONTRACTING PARTY REQUIRED. APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.**

**EXHIBIT “A”**  
**SCOPE OF SERVICES**

- I. Consultant will perform the following Services in connection with providing recodification of the City of Banning municipal code prepared in connection therewith:**
- II. As part of the Services, Consultant will prepare and deliver the following tangible work products and services to City:**

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Exhibit "A"-2

- American Legal Publishing will:
- (1) Examine the city's prior code of ordinances and all ordinances or resolutions provided by the city and determine which materials are to be codified.
  - (2) *Legal Review.* Utilize its staff of attorneys to review all materials to be codified and prepare a written report for the municipal attorney.
    - (a) The report may include notice of and suggestions for resolving the following:
      - Apparent conflicts with referenced state and federal statutes and administrative regulations;
      - Repealed, renumbered, or obsolete state and federal statutory citations;
      - Internal discrepancies such as duplications, ambiguities, and obsolete terminology;
      - Suggest new provisions which the city should consider including in the code and suggest deleting old provisions which are no longer necessary;
      - (b) At the option of the city, hold a conference with municipal representatives to review the report. The city will not be billed for time of the American Legal staff attorney if it chooses this option but will be billed for travel expenses.
    - (3) Classify all ordinances and resolutions which are of a general and permanent nature into titles, chapters, and sections, according to subject matter.
    - (4) Make changes to effect uniformity of style and to correct typographical and spelling errors; grammar, and usage. Substantive changes shall not be made in the wording of the ordinances. Suggestions for additions or changes to the ordinances will be submitted to the Municipal Attorney.
    - (5) Prepare:
      - (a) Title, chapter, and section headings;
      - (b) A table of contents and sectional analysis for each chapter;
      - (c) A legislative history for each section, citing the ordinance number and date of passage, as indicated on copies of ordinances supplied to the Publisher;
      - (d) Statutory cross-references to sections of the state statutes and to other pertinent parts of the Code where applicable. These references shall appear at the end of the section to which they apply;
      - (e) Parallel Reference Tables showing:
        1. The disposition of ordinances (in numeric sequence) included in the codification (Ordinance to Code);
        2. A listing of code sections based on state statutes (Statute to Code);
        3. A listing of prior code sections incorporated into the new code if applicable (Old Code to New Code).



1089

Exhibit "A"-3

- (f) An index (which will be created after the first draft of the Code is submitted) Provide the city with model or sample ordinances when available and upon request, at no additional charge.
- (7) Deliver to the city, within 4-7 months from receipt of the materials deemed necessary by the Publisher to begin the codification (prior code, ordinances and new code questionnaire), one copy of a draft of the Code for the city's examination.
- (8) If necessary, hold a conference to make final corrections, additions, and deletions to the Code. The city will be billed for the travel expenses of the American Legal staff attorney. The city may present changes to pages of the draft at the conference. After the final conference, any further changes, additions, or deletions shall be made in the future supplements to the Code. When the draft, and any changes thereto made by the city, is returned to the Publisher, such return of the draft shall be deemed final authorization by the city to publish the Code as returned. If additional conferences are requested by the city, which require the travel of a member of the staff of the Publisher, then the city shall be advised what the additional cost, if any, for such a conference will be.
- (9) Deliver to the city, within 3 months of receipt of the corrected draft, 2 printed copies meeting the following specifications:
  - (a) Type to be dual column
  - (b) Page size to be 8 1/2" x 11"
  - (c) Printed on high quality paper
  - (d) All copies to be in hard-covered, 3-ring, loose leaf binders. All binders shall have the city's name stamped in gold and shall contain divider tabs.
- (10) Provide a sample adopting ordinance to the city.

Exhibit "A"-4

- III.** In addition to the requirements of Parts I and II of this Scope of Services, during the performance of the Services, Consultant will keep City apprised through periodic status reports regarding the performance of the Services under this Agreement as set forth below and in Section 5.2, by the following means:
- a. In-person meetings and/or teleconferences.
  - b. Email updates/questions to applicant team and City while reviews are underway.
  - c. Conference calls.
- IV.** All work product is subject to review and acceptance by City. If the City determines that any work product is unacceptable, for any reason, it must be revised by Consultant without additional charge to City until found satisfactory and accepted by City.

1091

Exhibit "B"-1

None

EXHIBIT "B"  
SPECIAL REQUIREMENTS

1092

Exhibit "C"-1

- I. Consultant shall perform the following tasks ("Tasks") at the rates attached as Exhibit C-1.**
- II. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.**
- III. City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**
- A. Line items for all personnel describing the Services performed, the number of hours worked, and the hourly rate.**
  - B. Line items for all materials and equipment properly charged to the Services.**
  - C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.**
  - D. Line items for all approved sub-contractor labor, supplies, equipment, materials, and travel properly charged to the Services.**

**EXHIBIT "C"**  
**SCHEDULE OF COMPENSATION**

Exhibit "C-1"-1

American Legal Publishing proposes to recodify the municipal code for the City of Banning, CA at the following price:	
I. Base Cost*	\$34,275.
*The actual page count may vary from the estimate, or you might add new ordinances during the codification process. If the page estimate is low, the cost will be higher than the initial base cost.	
Includes	
1. Number of Copies of Banning's Code (includes binders and divider tabs)	2
2. Legal Analysis	
1. Research Internal Consistency	
2. Research State Law Consistency	
3. Legal and Editorial Research and Report	
3. Special Features	
1. Parallel References	
2. Comprehensive Index	
3. Tabular Matter (Tables, Charts, Graphs)	
4. Estimated Number of Pages	
8 1/2" x 11" Format	
Dual column (10-point type)	1500 pages
5. Data converted to searchable electronic format (one time fee)	\$1,275
6. Phone and email support with American Legal Publishing	Included
7. Remote training session	Included

6. COST PROPOSAL

EXHIBIT "C-1"  
CONSULTANT'S BILLING RATE AND TASK SCHEDULE



**EXHIBIT “D”**  
**SCHEDULE OF PERFORMANCE**

- I. Consultant shall perform all Services timely, and deliver the specified tangible work products to City in accordance with the schedule attached as Exhibit D-1.**
- II. The Contract Officer may approve extensions for performance of the Services in accordance with Sections 1.8 and 3.3.**



Step 01 – July/August 2024

Step 02 – September 2024

Step 03 - December 30, 2024

Step 04 -April 2025 (If there is a delay in Step 04, Step 05 pushes out accordingly)

Step 05 - July 2025

American Legal Publishing is poised to start the project per the start date outlined in Section II.D - Timeline. The selection date that the city has proposed is July 9, 2024. If the contract approval process is delayed by the City, that could impact the start date. If the City is able to move quicker through the contract approval process, American Legal could certainly start the project earlier.

REQUEST FOR PROPOSAL

MUNICIPAL CODE UPDATE PROJECT - CITY OF BANNING, CA

RFP-23-050



CITY OF BANNING, CA

<http://www.banningca.gov>

RELEASE DATE: May 10, 2024

DEADLINE FOR QUESTIONS: June 11, 2024

RESPONSE DEADLINE: June 19, 2024, 11:59 pm

RESPONSES MAY BE SUBMITTED ELECTRONICALLY TO:

<https://secure.procurenow.com/portal/banning-ca>

City of Banning  
REQUEST FOR PROPOSAL  
Municipal Code Update Project - City of Banning, CA

I. Notice .....  
II. Introduction .....  
III. Prerequisites .....  
IV. Scope of Work .....  
V. Vendor Questionnaire .....  
VI. Submission Instructions And Inquiries .....  
VII. Evaluation Criteria .....  
VIII. Terms And Conditions .....

Attachments:  
A - Professional Services Agreement Sample

## I. Notice

### REQUEST FOR PROPOSALS (RFP)

Municipal Code Update Project - City of Banning, CA

Dear Proposers:

The City of Banning (hereinafter referred to as the "City") is requesting proposals from a qualified public entity or private firm, to establish a contract for the scope of services outlined in this request for proposals.

NOTICE IS HEREBY GIVEN that online price and document submittals must be uploaded to the online bidding system in accordance with the instructions included herein, on or before the time and date set forth in the schedule of events. It shall be the responsibility of the proposer to upload their proposal before the announced time. However, responses may be submitted at any time prior to the deadline. (Submitted proposals may be withdrawn and resubmitted at any time prior to the deadline, and cannot be viewed by City staff until the close date and time.)

SOLICITATION DOCUMENTS: To obtain a copy of the solicitation documents, please visit <https://secure.procurenow.com/portal/banning-ca>. If you are not currently registered with the City of Banning through OpenGov, please create an account and subscribe to this project for notifications. Proposals may only be submitted by companies who are listed as a prospective bidder on the electronic bidding website for each project that they wish to submit a response to. Firms must also check the web site periodically for addenda information as failure to download and acknowledge any and all addenda in the submittal will result in proposer disqualification.

RESPONSIVE PROPOSALS: Once listed on the prospective bidders list, companies may submit their proposals on the electronic bidding system. The City will not accept proposals submitted by companies who are not on the prospective bidders list, or from companies who have submitted a proposal via facsimile, email, mail, or any other format not permitted by this solicitation. Further instructions for submitting proposals are explained in this solicitation. Companies are to adhere to all of the submittal instructions and requirements outlined in this solicitation in order to be considered responsive to this request for proposals.



## II. Introduction

### II.A Summary

The City of Banning ("City") is seeking a qualified entity or individual ("Company") to provide the services listed in the Scope of Work.

The City anticipates selecting one firm to perform the services.

Proposals are requested from Companies that have a demonstrated ability to perform the tasks identified in this Request for Proposal ("RFP").

### II.B Background

The City of Banning is strategically located astride Interstate 10 between the Inland Empire and the Coachella Valley in the San Geronio Pass. The City, incorporated in 1913, has a rich and colorful history.

Initially Banning served as a stagecoach and railroad stop between the Arizona territories and Los Angeles. This history has contributed to the present-day spirit of pioneer resourcefulness and "can do" attitude that is so prevalent in the community.

Banning is a friendly and wholesome place to work and raise a family. Desirable executive housing is available, as well as moderate and lower income housing. Clean air, ample water supplies and the memorable and inspiring scenic vistas of both Mt. San Geronio and Mt. San Jacinto, the 2 tallest peaks in Southern California, are additional amenities which make the City of Banning a logical choice as a development opportunity in the Southern California area.

### II.C Contact Information

**Barbara Mason**

Purchasing Manager

99 E. Ramsey Street

Banning, CA 92220

Email: [bmason@banningca.gov](mailto:bmason@banningca.gov)

Phone: [\(951\) 922-3121](tel:(951)922-3121)

**Department:**

Administrative Services

### II.D Timeline

This request for proposal will be governed by the following tentative schedule. All dates are subject to change at the discretion of the City.

<b>Release Project Date</b>	May 10, 2024
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City of Banning  
REQUEST FOR PROPOSAL  
Municipal Code Update Project - City of Banning, CA



<b>Pre-Proposal Meeting (Mandatory)</b>	<p>June 3, 2024, 9:00am  Microsoft Teams meeting  Join on your computer, mobile app or room device</p> <p><a href="https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDI2ODg1OGEtZGVkMS00MmRkLTljNGMtM2l4YWJmYzI0ZWY5%40thread.v2/0?context=%7b%22Tid%22%3a%2228cb6a6f-78fe-445d-acfd-cf07066168f7%22%2c%22Oid%22%3a%22f9c1cfd3-52ec-497e-81d5-e375c8c28269%22%7d">https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDI2ODg1OGEtZGVkMS00MmRkLTljNGMtM2l4YWJmYzI0ZWY5%40thread.v2/0?context=%7b%22Tid%22%3a%2228cb6a6f-78fe-445d-acfd-cf07066168f7%22%2c%22Oid%22%3a%22f9c1cfd3-52ec-497e-81d5-e375c8c28269%22%7d</a></p> <p>Meeting ID: 226 063 519 929  Passcode: Ha8EBJ</p> <p>If you have trouble logging in, please contact Barbara Mason at (951) 922-3121.</p>
<b>Question Submission Deadline</b>	June 11, 2024, 11:59pm
<b>Proposal Submission Deadline</b>	June 19, 2024, 11:59pm
<b>Anticipated Contractor Selection Date</b>	July 9, 2024



### III. Prerequisites

Proposals will only be considered from Companies that meet the following prerequisites:

#### III.A Years of experience

Have at least five (5) years' of experience, within the past seven (7) years under a legally registered business name, in providing services of a similar type and scope as described in the Scope of Services. Have not filed for bankruptcy under any business name over the past five (5) years.

#### III.B OpenGov Registration

Have created an account on OpenGov. Companies can register at: <https://secure.procurenow.com/portal/banning-ca>

Once registered, Companies must download this solicitation in order to appear on the Bidder's List as a "Prospective Bidder." Companies that fail to specifically download this solicitation will not appear on the Bidders' List and will be unable to participate or be considered for this RFP.

#### III.C Mandatory Pre-Proposal Meeting

All prospective Companies must attend the mandatory pre-proposal meeting on Monday, June 3, 2024 at 9:00 am to be held at:

Microsoft Teams meeting Join on your computer, mobile app or room device

[https://teams.microsoft.com/l/meetup-](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDI2ODg1OGEtZGVkMS00MmRkLTljNGMtM2I4YWJmYzI0ZWY5%40thread.v2/0?context=%7b%22Tid%22%3a%2228cb6a6f-78fe-445d-acfd-cf07066168f7%22%2c%22Oid%22%3a%22f9c1cfd3-52ec-497e-81d5-e375c8c28269%22%7d)

[join/19%3ameeting\\_NDI2ODg1OGEtZGVkMS00MmRkLTljNGMtM2I4YWJmYzI0ZWY5%40thread.v2/0?context=%7b%22Tid%22%3a%2228cb6a6f-78fe-445d-acfd-](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDI2ODg1OGEtZGVkMS00MmRkLTljNGMtM2I4YWJmYzI0ZWY5%40thread.v2/0?context=%7b%22Tid%22%3a%2228cb6a6f-78fe-445d-acfd-cf07066168f7%22%2c%22Oid%22%3a%22f9c1cfd3-52ec-497e-81d5-e375c8c28269%22%7d)

[cf07066168f7%22%2c%22Oid%22%3a%22f9c1cfd3-52ec-497e-81d5-e375c8c28269%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDI2ODg1OGEtZGVkMS00MmRkLTljNGMtM2I4YWJmYzI0ZWY5%40thread.v2/0?context=%7b%22Tid%22%3a%2228cb6a6f-78fe-445d-acfd-cf07066168f7%22%2c%22Oid%22%3a%22f9c1cfd3-52ec-497e-81d5-e375c8c28269%22%7d)

Meeting ID: 226 063 519 929 Passcode: Ha8EBJ If you have trouble logging in, please contact Barbara Mason at (951) 922-3121.

Attendance is mandatory at the pre-proposal meeting. The meeting will begin promptly at the time listed in the schedule. No admittance will be allowed once the meeting has begun.

Proposals from prospective Proposers not in attendance at this mandatory meeting will not be considered.

#### III.D Licenses

If applicable, Company and/or its key personnel, shall hold an appropriate license for the Company's discipline and the Services on the date the Proposal is submitted.



### III.E Department of Industrial Relations Registration

If applicable, Company shall have registered with the Department of Industrial Relations and any other required organizations.



## IV. Scope of Work

### IV.A Description of Services

The City of Banning Code of Ordinances consists of 18 Titles that has been amended periodically over time. The current Code may include policies and procedures that may be better suited for adoption by the City Council via resolution rather than by codified ordinance. The goal of this project is to conduct a holistic review and update of the Municipal Code to modernize the code utilizing reader friendly text and format, eliminate outdated and redundant provisions, eliminate inconsistencies and contradictions, simplify code provisions, and to ensure consistency and compliance with current state and federal law.

As part of our evaluation process for the Municipal Code Update Project ("Project"), the City is seeking assistance from a highly qualified legal consultant or consultant team who has relevant experience updating municipal codes in the State of California for General Law Cities.

The current Municipal Code is accessible at:

[https://library.municode.com/ca/banning/codes/code\\_of\\_ordinances](https://library.municode.com/ca/banning/codes/code_of_ordinances)

Since this will be the City's first comprehensive update, the City expects that the Municipal Code may require significant modifications to reflect current needs of the community. The new code should reflect best practices with respect to the content and administration of the code.

The comprehensive update needs to be user friendly for staff, property owners, and businesses by 1) removing legalese and jargon unfamiliar to the lay person, 2) improving clarity and overall functionality, and 3) reflect regulatory best practices. It is also envisioned that the update may include tables and illustrations whenever possible to help convey concepts. Lastly, the updated code must be consistent with current case, state, and federal laws.

### IV.B General Approach

The selected consultant team should be experienced professionals who can work collaboratively with the local municipality to develop a clear, concise and reasonable set of regulations that implement the City's goals. The following principals should guide the update process:

- Focus on improving the Code to eliminate deficient, outdated, overly complex or unnecessary provisions.
- Make the code internally consistent between Titles and Chapters.
- Create a user-friendly code that is easy to administer by staff and easily understood by the residential and business community.
- Use plain, easily understood language in describing requirements and procedures.
- Ensure compatibility with case law and current state and federal law.
- Evaluate the code for regulatory gaps.
- Eliminate "repealed" or "deleted" titles, chapters, or sections.
- Apply form-based concepts and development flexibility where appropriate.



- Insert tables, graphics and/or illustrations wherever practical or necessary to convey concepts.
- Conduct full legal review.

The consultant should propose an approach to understanding the existing code and the City's needs. The approach should include gathering needed background information and analysis to suggest recommendations on how best to modernize the code. The existing conditions review should include, at a minimum, a thorough examination of the current Municipal Code.

#### **IV.C Scheduling**

The City desires the selected consultant to propose a reasonable and consistent schedule for completing the project in a timely manner. The City expects that each module will include the following:

- initial scoping meetings with relevant staff;
- an assessment of the current code language including a thorough review of relevant federal and state statutory requirements;
- an initial draft for review by relevant staff;
- participation in general updates and discussion with relevant staff; and
- a final draft for consideration by the City Council.

#### **IV.D Preliminary Assessment and Recommendations**

Using information gained from the existing conditions review, the consultant shall prepare a code assessment and recommendations on how best to update the Municipal Code. This work should include a code audit of the existing conditions strengths, weaknesses, opportunities, and constraints relating to content, structure and compliance with current law. This shall be done on an ongoing basis with each Title of the Municipal Code being addressed incrementally throughout the project schedule.

A formal recommendation shall be prepared that summarizes the analysis, findings and preliminary recommendations on how best to approach revising the current Municipal Code by Title and overall.

#### **IV.E Legal Review**

The consultant firm shall conduct a full legal review of the Municipal Code. All legislation shall be researched and reviewed against state Constitution and state Law, including case law.

The consultant shall compare ordinances to other ordinances within the Municipal Code to determine if there are inconsistencies or conflicts within the legislation itself, identify preemptions and other potential problems, and ensure that the Municipal Code is in conformity with state law.



#### **IV.F Draft Municipal Code Language and Ordinances**

Building upon the preliminary assessment and recommendations report and the legal review, the consultant shall prepare a draft of the updated Municipal Code on a per Title basis to be aligned with the City's proposed project schedule.

The consultant will be responsible for the drafting of the ordinances, and the associated staff reports that will be presented to the City Council for adoption, as well as the public noticing language for all ordinances.

Applying the general direction principles listed above, each new Title should be clearly worded and organized to encourage the documents' accessibility to a wide range of audiences. Graphics and tables should be used when possible to illustrate concepts.

The consultant shall prepare a companion document that carefully tracks all significant changes from the existing code to the newly proposed code by Title to ensure transparency.

#### **IV.G Public Hearing Notices**

Formal public hearing notices shall be prepared by the consultant, along with drafting a proposed calendar for when public hearing notices should be published.

#### **IV.H City Council Meetings**

The consultant will be responsible for preparing the staff reports and ordinances. The consultant shall also provide a representative to attend City Council Meetings related to this project.

#### **IV.I Recodification of Municipal Code**

The consultant shall prepare a final version of the updated Municipal Code to be adopted by the City Council. Upon adoption, the consultant shall provide the City with two (2) copies of the updated Code, printed in an 8-1/2 x 11 inch, double-column page format, housed in 3-post expandable binders.

The consultant shall include in this task, time to address any follow-up review with Municode to address any scrivener's error prior to recodification of the Municipal Code.

#### **IV.J Optional Services**

The consultant may provide information on any additional product options or services related to the codification not outlined in this RFP, such as online code hosting services and maintaining the City of Banning Municipal Code. Include a complete description of the optional services, procedures involved and a separate identification of all applicable costs.



## V. Vendor Questionnaire

Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Responses should emphasize the Company's demonstrated capability to perform work of this type. Emphasis should be concentrated on completeness and clarity of content. Proposals shall adhere to the following format for organization and content. Proposals must be typed and arranged/divided in the following sequence to facilitate evaluation.

### V.A Cover Letter\*

The cover letter shall include a brief general statement of intent to perform the services and confirm that all elements of the RFP have been reviewed and understood. The letter shall include a brief summary of Company's qualifications and Company's willingness to enter into a contract under the terms and conditions prescribed by this RFP and in the Sample Agreement. The letter must identify a single person for contact during the RFP review process.

\*Response required

### V.B Proposal\*

#### A. Statement of Understanding and Approach

- This section must demonstrate an understanding of the Services. It should describe the general approach, organization and staffing required for the Services requested. If necessary, preliminary investigations, due diligence, and research shall be discussed in this section.
- This section should include the following:
  - An implementation plan that describes in detail (i) the methods, including controls by which your firm or entity manages projects of the type sought by this RFP; (ii) methodology for soliciting and documenting views of internal and external stakeholders; (iii) and any other project management or implementation strategies or techniques that the respondent intends to employ in carrying out the work.
  - Detailed description of efforts your firm or entity will undertake to achieve client satisfaction and to satisfy the requirements of the "Scope of Work" section.
  - Detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion, including a complete transition plan. Include your plan to deal with fluctuation in service needs and any associated price adjustments.





- Detailed description of specific tasks you will require from City staff. Explain what the respective roles of City staff and your staff would be to complete the tasks specified in the Scope of Work.
- Proposers are encouraged to provide additional innovative and/or creative approaches for providing the service that will maximize efficient, cost-effective operations or increased performance capabilities. In addition, the City will consider proposals that offer alternative service delivery means and methods for the services desired.
- Proposers are also requested to identify any City owned facilities or property which Proposer would propose to use or lease, purchase, or rent from the City in connection with the services to be performed, including information about the terms of any proposed lease, purchase or use of such equipment and facilities, and how this proposed structure affects the overall cost proposal to the City, if applicable.

B. Company Information

- This section shall include contact person information, address and telephone number of the company main office and branch offices. Each Company shall identify itself as to the type of organizational entity (corporation, sole proprietorship, partnership, joint venture, etc.). Any supplemental information that Company believes may be pertinent to the selection process may be provided.
- The proposer should provide an affirmative statement that it is independent of the City as defined by generally accepted auditing standards the U.S. General Accounting Office's Government Auditing Standards (1994).
- The Proposal shall identify any litigation, mediation, or arbitration, regarding the performance of any services similar to the Services, in which the Company has been involved in the past five (5) years. If the Services require a license or certification, the Proposal shall include any claims or disciplinary action taken against Company or any of Company's key personnel within the past five years.

C. Company Personnel

- This section shall contain names, contact numbers and description of experience, including licenses and/or certifications, of all key personnel who would be assigned to perform the Services. Members of the Company's professional team (managers, contact person, etc.) should be identified by name, title, phone number, and description of the portion of work they will be assigned to perform under this Agreement. Also include major subcontractors (if any) and their degree of involvement in this program. If the Company is including any subcontractors, the Company shall identify how long the Company has worked with the subcontractor.
- An affirmative statement should be included that the proposer and all assigned key professional staff are properly licensed to practice in California.



D. Disclosure

- Please disclose any and all past or current business and personal relationships with any current Banning elected official, appointed official, City employee, or family member of any current Banning elected official, appointed official, or City employee. Any past or current business relationship may not disqualify the firm from consideration.

E. Experience and References

- The Proposal must demonstrate that the Company, or its key personnel, meets the minimum experience requirement in #Prerequisites with a legally registered business name, that provides services of a similar type and scope as described in the Scope of Services. A Company shall not have filed for bankruptcy under any business name over the past five (5) years.
- Company shall provide at least 3 references, within the past 5 years, of clients for whom services have been performed that are comparable in quality and scope to that specified in this RFP. The references shall include client names, addresses, telephone numbers and e-mail addresses of the clients for whom prior work was performed and include an explanation of the services provided along with project start and end dates.

\*Response required

**V.C Price Proposal\***

All proposals submitted shall have a stated dollar bid amount for providing the services outlined in the Scope of Services. The total shall be an all-inclusive maximum price and to contain all direct and indirect costs including all out-of-pocket expenses with a full and complete breakdown of all said costs, and proposed fees including but not limited to hourly rates, reimbursable expenses and/or rates, mileage and/or travel cost, miscellaneous fees, etc., for the first year's audit engagement.

In addition, a statement must be included in this section that if the proposer is charging travel costs, the proposer's charges invoiced to the City for travel, lodging and subsistence shall not exceed the current IRS rates.

\*Response required

**V.D Value Added Services**

Please describe any value-added services your company offers that may be of use to the City

**V.E Evidence of Insurance\***

In addition, the Company shall provide evidence of possession of insurance in the coverage and amounts listed in the Sample Agreement.



City requires that licensees, lessees, and vendors have an approved Certificate of Insurance (not a declaration or policy) or proof of legal self-insurance on file with the City for the issuance of a permit or contract. Within ten (10) consecutive calendar days of award of contract, successful Proposer must furnish the City with the Certificates of Insurance proving coverage as specified in contract sample.

\*Response required

#### **V.F Vendor Forms**

Please download the below documents, complete, and upload.

- [New Vendor Packet.pdf](#)

#### **V.G Type of Business\***

- ☐ C Corporation
- ☐ S Corporation
- ☐ Limited Liability C Corporation
- ☐ Partnership
- ☐ Limited Liability Partnership
- ☐ Sole Proprietor/Individual
- ☐ Other

\*Response required

#### **V.H Type your Legal Company Name Here\***

State your Company's Name Here. This will be verified against the California Secretary of State's Website.

\*Response required

#### **V.I EX PARTE COMMUNICATIONS CERTIFICATION\***

I certify that Bidder and Bidder's representatives have not had any communication with a City Councilmember concerning this IFB at any time after the date and time that this IFB was publicly advertised.

- ☐ Yes
- ☐ No

\*Response required

#### **V.J EX PARTE COMMUNICATIONS CERTIFICATION CONTINUED\***

If stated "Yes" above, please explain the circumstances in the following space, or state "None."

\*Response required



**V.K DISQUALIFICATIONS QUESTIONNAIRE\***

Has the Company, any officer of the Company, or any employee of the Company who has proprietary interest in the Company, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

☐ Yes

☐ No

\*Response required

**V.L DISQUALIFICATIONS QUESTIONNAIRE CONTINUED\***

If stated "Yes" above, please explain the circumstances in the following space, or state "None."

\*Response required

**V.M DISCLOSURE OF GOVERNMENT POSITIONS\***

Each Bidder shall disclose below whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."

\*Response required

**V.N CERTIFICATION COMPLIANCE\***

Please download the below documents, complete, and upload.

- [Certification-Compliance wi...](#)

\*Response required



## VI. Submission Instructions And Inquiries

### VI.A Inquiries

If prior to the date fixed for submission of Proposals, a prospective Company discovers any ambiguity, conflict, discrepancy, omission or other errors in this RFP or any of its appendices, exhibits or attachments, the Company shall immediately notify the City of such error in writing and request modification or clarification of the document. Modifications shall be made by written Addenda to the RFP.

If a Company fails to notify the City, prior to the date fixed for submissions of Proposals, of an error in the RFP known to the Company, or an error that reasonably should have been known to the Company, the Company shall submit its Proposal at its own risk, and if the Company is awarded a Contract, it shall not be entitled to additional compensation or time by reason of the error or its later correction.

All communications regarding technical, scope, and/or project related questions and requests for clarifications, changes, exceptions, and deviations to the terms and conditions set forth in this RFP **shall be submitted via "Q&A"** through the City's Electronic Bidding System, ProcureNow, before the deadline and according to these specifications herein. Any and all other bidding communications shall only be with **Nicole Jews, Purchasing Manager**, at (951) 922-3121.

**The Final day for receipt of questions from the Proposer shall be on or before the due date indicated in the schedule of events section.** To ensure fairness and avoid misunderstandings, **all communications must be in written format** and submitted only in the format set forth above. Any verbal communications will not be considered or responded to. All questions received by the due date will be logged and reviewed and if required, a response will be provided via an addendum to the RFP that will be posted on the City's website. **Any communications, whether written or verbal, with any City Councilmember, City staff, or RFP evaluation panel member other than the individual indicated above, prior to award of a contract by City Council, is strictly prohibited and the Proposer shall be disqualified from consideration.**

### VI.B Completion Of Proposal

Proposals shall be completed in all respects as required by this RFP. A proposal may be rejected if conditional or incomplete, or if it contains any alterations or other irregularities of any kind, and will be rejected if any such defect or irregularity can materially affect the quality of the proposal. Proposals which contain false or misleading statements may be rejected. If, in the opinion of the City's Selection Committee, such information was intended to mislead the City in its evaluation of the proposal, and the attribute, condition, or capability is a requirement of this RFP, the proposal will be rejected. Statements made by a Company shall also be without ambiguity, and with adequate elaboration, where necessary, for clear understanding.

Unauthorized conditions, exemptions, limitations, qualifications, or provisions attached to a Proposal will render it non-responsive and will cause its rejection.



The Company, in responding to this RFP, must submit Proposals in the format identified in this RFP. The Proposal must address all requirements of the RFP even if a “no response” is appropriate.

Costs for developing Proposals are entirely the responsibility of the Company and shall not be chargeable to the City. The City shall not be liable for any costs incurred in response to this RFP, including but not limited to, costs for any interviews, presentations, or other follow-up information necessary as part of the selection process. All costs shall be borne by the Company responding to this RFP. The Company responding to this RFP shall hold the City harmless from any liability, claim, and expense whatsoever incurred by or on behalf of the Company.

## **VI.C Delivery / Submission Of Proposals**

The Final day for submission of proposals shall be on or before the due date indicated in the schedule of events section.

Companies shall register on the City’s Electronic Bidding System, <https://www.banningca.gov/bids>. Once registered, Companies must download the RFP while logged in under their own name and identification number to appear on the Current Prospective Bidders List as a “Prospective Bidder.” Companies that fail to download the RFP will not appear on the Current Prospective Bidders List and their proposals will be considered non-responsive. If a Company is unable to register or download the RFP from the bidding website, a representative may contact ProcureNow.

All proposal documents and supplementary documents must be uploaded using the City’s bidding website prior to event date and time as instructed in this solicitation. Once file(s) have been uploaded and the Submission Status shows as “Submitted” the submission is complete. At that point respondents will receive an email confirmation from the bidding website.

The City reserves the right to reject any and all proposals and to waive information and minor irregularities in any proposal received.

Acceptance of Terms and Conditions - Submission of a proposal pursuant to this RFP shall constitute acknowledgment and acceptance of all terms and conditions hereinafter set forth in this RFP.

The time and date are fixed, and extensions will not be granted unless specifically stated by the City in an addendum to this RFP. Proposals not received before the bid event time will not be accepted.

## **VI.D Alternative Proposals**

Only one proposal is to be submitted by each Company for this RFP. Multiple simultaneous proposals will result in rejection of all Proposals submitted by Company. A Company may, prior to the proposal due date and time, withdraw a proposal and submit a new proposal, so long as the new proposal is submitted before the proposal due date and time.



#### **VI.E Examination Of RFP And Sites Of Work**

The Company shall carefully examine the RFP and all sites, if applicable, of the work contemplated. The submission of a Proposal shall be conclusive evidence that the Company has investigated and is satisfied as to the conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished, the difficulties to be encountered, and to the requirements of the Proposal, RFP, and other Contract Documents.

By submitting a Proposal, the Company hereby certifies that it has: examined the local conditions, read each and every clause of this RFP, included all costs necessary to complete the specified work in its proposed prices, and agrees that if it is awarded the Contract it will make no claim against the City based upon ignorance of local conditions or misunderstanding of any provision of the Contract. Should the conditions turn out otherwise than anticipated by it, the Company agrees to assume all risks incident thereto.

#### **VI.F Addenda**

Unless otherwise specified, any addenda issued during the time of bidding must be acknowledged electronically via the City's Bidding Website, which will be made part of the proposal. Addenda notifications will be provided to those listed on the Electronic Prospective Bidder's List via email.

#### **VI.G Withdraw Of Proposals**

All proposals shall be firm offers and may not be withdrawn for a period of one hundred twenty (120) days following the deadline date for submission of proposals noted herein. Submitted Proposals may be withdrawn at any time prior to the submission deadline.

#### **VI.H Pre-Proposal Meeting**

There will be a mandatory pre-proposal meeting on Monday, June 3, 2024 at 9:00 am. The meeting will be located at Microsoft Teams meeting Join on your computer, mobile app or room device [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_NDI2ODg1OGEtZGVkMS00MmRkLTljNGMtM2I4YWJmYzI0ZWY5%40thread.v2/0?context=%7b%22Tid%22%3a%2228cb6a6f-78fe-445d-acfd-cf07066168f7%22%2c%22Oid%22%3a%22f9c1cfd3-52ec-497e-81d5-e375c8c28269%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDI2ODg1OGEtZGVkMS00MmRkLTljNGMtM2I4YWJmYzI0ZWY5%40thread.v2/0?context=%7b%22Tid%22%3a%2228cb6a6f-78fe-445d-acfd-cf07066168f7%22%2c%22Oid%22%3a%22f9c1cfd3-52ec-497e-81d5-e375c8c28269%22%7d) Meeting ID: 226 063 519 929 Passcode: Ha8EBJ If you have trouble logging in, please contact Barbara Mason at (951) 922-3121.. Attendance is required in order to submit a proposal.





## VII. Evaluation Criteria

The City reserves the right to amend, withdraw, and cancel this RFP. The City also reserves the right to reject all responses to this RFP at any time prior to agreement execution. Furthermore, the City reserves the right to request additional information about any and all Proposals, that in City's opinion, is necessary to assure that the Company's competence, number of qualified employees, business organization, experience, and financial resources are adequate to perform the Services.

All Proposals shall be reviewed to verify that the Company has met the minimum requirements as stated in this RFP. Proposals that have not followed the rules, do not meet minimum content and quality standards, and/or do not provide references will be rejected as non-responsive.

Responsive proposals will be evaluated on the basis of the criteria below. **If needed, interviews will be scheduled during or after the week indicated in the "Schedule of Events" section.** If needed, interviews will be conducted by the same members on the proposal evaluation panel. Dates, times, and a location will be coordinated at that time if interviews are deemed necessary after the evaluation of responsive proposals. If interviews are deemed necessary, candidates who have submitted the highest scoring proposals within a competitive range as determined by the City will be invited to participate in the interview process.

The selected Company shall then enter into exclusive negotiations with the City to formalize the Scope of Service and Compensation. Recommendation for award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If the City is unable to obtain a fair and reasonable price or cannot reach agreement regarding the terms for the Scope of Services, then the City will end negotiations with that Company and begin negotiations with the next Company which best meets the needs of the City, and so on until a City and the Company reach agreement.

The City intends to select the Company that offers the best value to the City based on the criteria outlined above.

No.	Evaluation Criteria	Scoring Method	Weight (Points)
1.	<b>Qualifications</b>	Points Based	25 (25% of Total)
2.	<b>Pricing</b>	Points Based	20 (20% of Total)
3.	<b>Experience (Projects of similar size and scope)</b>	Points Based	20 (20% of Total)
4.	<b>Professional References</b>	Points Based	10 (10% of Total)



5.	<b>Approach and Methodology</b>	Points Based	20 <i>(20% of Total)</i>
6.	<b>Value Added Services</b>	Points Based	5 <i>(5% of Total)</i>



VIII.A Contract Terms And Conditions

The successful company will be required to execute the City's standard agreement ("Agreement"). A sample is attached herein. The successful company must meet all insurance requirements in the Agreement. All terms and conditions of the Agreement are non-negotiable. Companies must possess valid City of Banning Business License throughout the term on the contract. Failure to execute the Agreement and furnish the required insurance within the required time period shall be just cause for the rescission of the award. If any of the successful Companies refuse or fail to execute the Agreement, the City may award the Agreement to the next most qualified Company.

VIII.B Public Records

All Proposals submitted in response to this RFP become the property of the City and pursuant to the Public Records Act (Gov. Code, § 6250 et seq.) are public records, and as such may be subject to public review at least 10 days before selection.

The Company must notify the City in advance of any proprietary or confidential materials contained in the Proposal and provide justification for not making such material public. The City shall have sole discretion to disclose or not disclose such material subject to any protective order that the Company may obtain. Note that under California law, price proposal to a public agency is not a trade secret.

Submission of a proposal shall indicate that, if Proposer requests that the City withhold from disclosure information identified as confidential, and the City complies with the Proposer's request, Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the City from and against all damages (including but not limited to attorney's fees that may be awarded to the party requesting the Proposer information), and pay any and all costs and expenses related to the withholding of Proposer information. Proposer shall not make a claim, sue, or maintain any legal action against the City or its directors, officers, employees, or agents concerning the disclosure, or withholding from disclosure information identified as confidential, the City shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to the City.

The City reserves the right to make use of any information or idea contained in the Proposal. All materials, ideas and formats submitted in response to this RFP will become the property of the City upon receipt.



City of Banning  
REQUEST FOR PROPOSAL

Municipal Code Update Project - City of Banning, CA



protest is based. Protests based upon alleged improprieties that are not apparent or which could not reasonably have been discovered prior to submission date of the proposals, such as disputes over the staff recommendation for contract award, shall be submitted in writing to the RFP Facilitator, within forty-eight hours from receipt of the notice from the City advising of staff's recommendation for award of contract. The protest must clearly specify in writing the grounds and evidence on which the protest is based. The RFP Facilitator will respond to the protest in writing at least three days prior to the meeting at which staff's recommendation to the City Council will be considered. Should Proposer decide to appeal the response of the RFP Facilitator, and pursue its protest at the Council meeting, it will notify the RFP Facilitator of its intention at least two days prior to the scheduled meeting.

Failure to comply with the rules set forth herein may result in rejection of the protest. Protests based upon restrictive specifications or alleged improprieties in the proposal procedure which are apparent or reasonably should have been discovered prior to receipt of proposals shall be filed in writing with the RFP Facilitator at least 10 calendar days prior to the deadline for receipt of proposals. The protest must clearly specify in writing the grounds and evidence on which the protest is based.

## **VIII.E Protest Procedures**

The City may reject any/or all Proposals and may waive any immaterial deviation in a Proposal. The City's waiver of an immaterial defect shall in no way modify this RFP or excuse the Company from full compliance with this RFP and/or the Contract Documents if awarded the Contract. Proposals that include terms and conditions other than City's terms and conditions may be rejected as being non-responsive. The City may make investigations as deemed necessary to determine the ability of the Company to perform the work, and the Company shall furnish to the City all such information and data for this purpose as requested by the City. The City reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Company fails to satisfy the City that such Company is properly qualified to carry out the obligations of the Agreement and to complete the work described herein.

## **VIII.D Rejection Of Proposals**

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code sections 1090 et seq., or sections 87100 et seq., during the performance of services under any Agreement awarded. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of any Agreement awarded. Violation of this provision may result in any Agreement awarded being deemed void and unenforceable.

## **VIII.C Conflict Of Interest**

City of Banning  
REQUEST FOR PROPOSAL

Municipal Code Update Project - City of Banning, CA



The City retains the right to cancel this RFP at any time, should it be deemed to be in the best interest of the City. No obligation either expressed or implied exists on the part of the City to make an award based on the submission of any proposals.

#### VIII.F Cancellation



City of Banning  
REQUEST FOR PROPOSAL  
Municipal Code Update Project - City of Banning, CA

IN WITNESS WHEREOF the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF BANNING  
CONSULTANT

\_\_\_\_\_  
Douglas Schulte, City Manager  
NAME: TITLE: Date

\_\_\_\_\_  
NAME: TITLE: Date

ATTEST:

\_\_\_\_\_  
Caroline Patton Deputy City Clerk  
NAME: TITLE: Date  
\_\_\_\_\_  
Tax ID No.  
\_\_\_\_\_  
Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
APPROVED AS TO FORM:  
Richards, Watson & Gershon

\_\_\_\_\_  
Kevin G. Ennis, Esq., City Attorney  
NAME: TITLE: Date  
\_\_\_\_\_  
City Council Approval: \_\_\_\_\_

NOTE: PROOF OF AUTHORITY TO BIND CONTRACTING PARTY REQUIRED. APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.



City of Banning  
Purchasing Division  
Barbara Mason, Purchasing Manager  
99 E Ramsey St, Banning, CA 92220

EVALUATION TABULATION  
RFP No. RFP-23-050

Municipal Code Update Project - City of Banning, CA  
RESPONSE DEADLINE: June 19, 2024 at 11:59 pm  
Report Generated: Saturday, August 17, 2024

SELECTED VENDOR

VENDOR RECOMMENDED BY THE EVALUATION PROCESS

Vendor	Location
American Legal Publishing	Cincinnati, OH

Vendor	Qualifications 25 Points Based (25%)	Pricing 20 Points Based (20%)	Experience (Projects of similar size and scope) 20 Points (20%)	Professional References 10 Points (10%)	Approach and Methodology 20 Points (20%)	Value Added Services 5 Points (5%)	Total Score (Max Score 100)
American Legal Publishing	23.3	16.7	20	10	18.7	5	93.67
CivicPlus, LLC	0	0	0	0	0	0	0
Excluded							





CITY OF BANNING  
STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Lincoln Bogard, Administrative Services Director  
Lincoln Bogard, Administrative Services Director

MEETING DATE: August 27, 2024

SUBJECT: City of Banning Fiscal Year 2022-23 Annual Comprehensive Financial Report (ACFR), Banning Utility Authority (BUA) FY 2022-23 Financial Statements, City of Banning FY 2022-23 GANN Limit Agreed Upon Procedures (AUP) Report, City of Banning FY 2022-23 Single Audit Report, and related Management Letters and Governance Letters

**RECOMMENDATION:**

Receive and file City of Banning Fiscal Year 2022-23 Annual Comprehensive Financial Report (ACFR), Banning Utility Authority (BUA) FY 2022-23 Financial Statements, City of Banning FY 2022-23 GANN Limit Agreed Upon Procedures (AUP) Report, City of Banning FY 2022-23 Single Audit Report, and related Management Letters and Governance Letters.

**BACKGROUND:**

After the conclusion of each fiscal year, an independent auditor (currently Elide Bailly LLP) reviews the reporting of the City's financial statements in accordance with industry accounting standards. The result is an "Annual Comprehensive Financial Report (ACFR)". It includes financial statements for the City of Banning, the Banning Utility Authority, and the Banning Successor Agency of the Former RDA. It also contains the independent auditor's report, which describes the scope of the audit as well as the auditor's opinion on the financial statements. For this past Fiscal Year 2022-23 ACFR, the City received an "qualified and unmodified" opinion. A "qualified" opinion occurs when an area(s) exist that were not able to be audited. The City did not have an auditor as of June 30, 2023, so the new auditors were not onsite to verify ending inventory counts. An "unmodified" opinion is only issued when there are no significant reporting issues, the financial statements are free of material misstatements, and information is presented in accordance with Generally Accepted Accounting Principles (GAAP). This opinion indicates that the City's financial condition, position, and operations are fairly presented in the financial statements. This is important to financial statement users and provides comfort to the City's creditors, while enabling the City to obtain better interest rates on any new debt issuances.

City management assumes full responsibility for the completeness and reliability of all the information presented in the ACFR. The City is continuing to establish a comprehensive internal control framework designed to protect the City's assets from loss, theft, or misuse and provide sufficient reliable information that the City of Banning's financial statements are in conformity with GAAP. The cost of internal controls should not outweigh the resulting benefits and internal controls are designed to provide reasonable assurance, not absolute assurance, that the financial statements will be free from material misstatements. City management asserts that, to the best of our knowledge and belief, the financial data provided to the auditor is complete and reliable in all material respects.

**JUSTIFICATION:**

The City received the Certificate of Achievement for Excellence in Financial Reporting issued by the Government Finance Officers Association for its Fiscal Year 2021-22 ACFR, its third consecutive award.

During the audit, staff provided all requested information to the auditors. We received the final audit opinion on Wednesday, July 31st, 2024. The ACFR is posted below as Attachment 1.

Staff successfully implemented new reporting requirements for GASB 96 – Software Based Information Technology Arrangements (SBITA), but that was the only GASB requirement due for implementation by the city this year. The “Management Letter” from last year’s ACFR noted one matter for consideration that staff expects to be fully corrected for Fiscal Year 2023-24 ACFR issuance.

Per City request, the new auditors performed a deep dive and identified ten current year adjustments and seven prior year adjustments. Four of the current year adjustments involved the 60-day revenue lookback, which staff is changing to a 90-day revenue lookback to better align with the timing of revenue receipts. Three of current year adjustments dealt with Lease and SBITA accounting entries, which implemented in Fiscal Years 2021-22 and 2022-23, respectively. Management is conducting training with staff on all accounting adjustments identified. Most of the prior year adjustments dated back several years. Other material weakness findings related to year-end inventory counts (performed on June 27, 2024) and timeliness of bank cash reconciliations (now being completed within 30-days of month end). Management has prepared an action plan for all findings noted.

**FISCAL IMPACT:**

None.

Implied in all City Council Goals, Objectives, and Work Programs is the fundamental principle that the City will follow the City Council’s adopted Fiscal Policy and will exercise the utmost financial discipline and accountability. In accordance with, and pursuant to, Section 37208 of the Government Code, the City Manager is responsible for preparing an audited Comprehensive Financial Report each year.

**ALTERNATIVES:**

Receive and file only.

**BUDGETED?:**

No

**CONTRACT/AGREEMENT:**

No

**ATTACHMENTS:**

1. City of Banning 2023 Final ACFR.pdf
2. City of Banning 2023 Final GANN Limit AUP.pdf
3. City of Banning 2023 Final Governance Letter.pdf
4. City of Banning 2023 Final Management Letter.pdf
5. City of Banning 2023 Final Single Audit Report.pdf
6. Banning Utility Authority 2023 Final Financial Statements.pdf
7. Banning Utility Authority 2023 Final Governance Letter.pdf

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# FISCAL YEAR ENDED JUNE 30, 2023 City of Banning, California



## ANNUAL COMPREHENSIVE FINANCIAL REPORT



# ANNUAL COMPREHENSIVE FINANCIAL REPORT

of the

**CITY OF BANNING, CALIFORNIA**

For the Fiscal Year ended

JUNE 30, 2023

*Prepared By:*

*Fiscal Services / Finance Department*

**ADMINISTRATIVE SERVICES DIRECTOR**

Lincoln Bogard, MACC, CPA, CFE

**FINANCE STAFF**

DEPUTY FINANCE DIRECTOR

A'ja Wallace, MPA

FINANCE MANAGER

Cheryl Stafford

SR. ACCOUNTANT

Cornelio Datuin

ACCOUNTANT II

Austin Flint, MBA

ACCOUNTANT I

Adam Strum

ACCOUNTING SPECIALISTS

Sarah Olsen Jacob Stewart Joyce Phillips



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The goal of the independent audit is to provide reasonable assurance that the financial statements of the City for the fiscal year ended June 30, 2023, are free of material misstatement. The independent audit involved examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; assessing the accounting principles used and significant estimates made by

The City's financial statements have been audited by Eide Bailly LLP. Eide Bailly is an independent public accounting firm fully licensed and qualified to perform audits of public agencies within the State of California.

The City of Banning's MD&A can be found immediately following the independent auditor's report. GAAP requires that management provide a narrative introduction, overview, and analysis to accompany the basic financial statements in the form of Management's Discussion and Analysis (MD&A). This letter of transmittal is designed to complement the MD&A and should be read in conjunction with it. The City of Banning's MD&A can be found immediately following the independent

This report consists of management's representations concerning the finances of the City. Responsibility for the accuracy of the data, the completeness, and the fairness of the presentation, including all disclosures, rests with the City's management. To provide a reasonable basis for making these representations, management has established a comprehensive internal control framework that is designed to both protect the City's assets from loss, theft, or misuse, and to compile sufficient reliable information for the preparation of the City's financial statements in conformity with accounting principles generally accepted in the United States of America. Because the cost of internal controls should not outweigh their benefits, internal controls have been designed to provide reasonable rather than absolute assurance that the financial statements will be free from material misstatement. As management, we assert that, to the best of our knowledge and belief, the enclosed report is accurate in all material respects and is reported in a manner designed to present fairly the financial position and results of operations of the various funds of the City.

It is our pleasure to submit the Annual Comprehensive Financial Report (ACFR) for the City of Banning (City) for the fiscal year ended June 30, 2023 (FY 2022-23), prepared in accordance with Generally Accepted Accounting Principles (GAAP) as promulgated by the Governmental Accounting Standards Board (GASB).

Honorable Mayor, Members of the City Council & Citizens of the City of Banning, California,

July 31, 2024

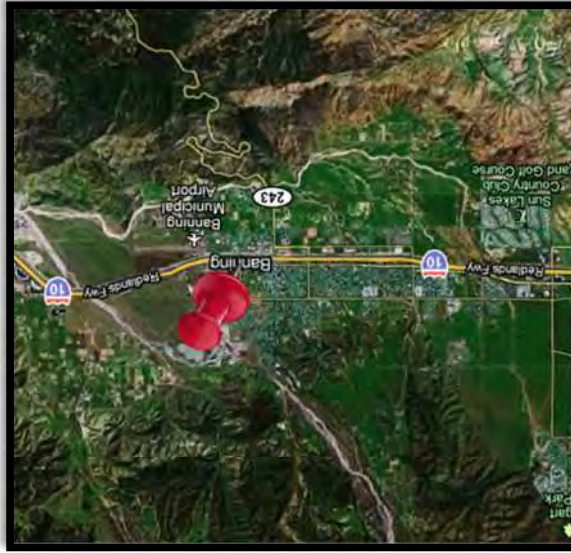
City of Banning



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Banning has a rich and colorful history. Its first permanent landmark, an adobe house, was built on a tract of land now known as the Gilman place, in 1854. The house was used as a stagecoach station and meal stop for many years. The Colorado Stage and Express Line included Banning on its route



The City of Banning is strategically located in Riverside County along the route of U.S. Interstate 10 approximately 25 miles northwest of Palm Springs and 82 miles east of Los Angeles. Beautifully located in the San Geronimo Pass between the two highest mountain peaks in Southern California, Banning is only minutes away from many desert and mountain resorts. One of Banning's unique characteristics is that it provides the serenity of a rural setting yet has easy access to major metropolitan areas. Its unique location is at a relatively high altitude (2,350 feet) in the pass which provides a favorable year-round climate and air quality. Its municipal boundaries encompass 23.24 square miles. The City's Sphere of Influence encompasses another 8.5 square miles.

## Profile of the City of Banning

management, and evaluating the overall financial statement presentation. The independent auditors concluded, based upon the audit, that there was a reasonable basis for rendering a qualified opinion that City's ACFR for the year ended June 30, 2023, is fairly presented in conformity with GAAP. The qualification related primarily to the fact that the contract with Eide Bally was executed after fiscal year end and inventory observations as of June 30, 2023, could not be conducted. Staff also asked Eide Bally to conduct a thorough review of the City in the first year of the contract to ensure as many historical errors as possible could be identified and corrected. The requirements of the upcoming GASB Statement 100 – Accounting Changes and Error Corrections are making the disclosures of historical errors much more costly and staff would like to ensure errors are identified and corrected prior to the implementation of that Standard in Fiscal Year 2023-24. The independent auditor's report is presented as the first component of the financial section of this report.

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Banning is home to many small and large companies, including Fortune 500 companies, which include Boot Barn, Pet Smart, Skechers USA, So Cal West Coast Electric, Consolidated Electric Distributors, Harbor Freight Tools, Lawrence Equipment, Serta Mattress Firm, Walgreens, Albertsons Grocery Store, Smart & Final, Cardenas Markets, T-Mobile, Hobby Lobby, Marshalls, O'Reilly Automotive, Big 5 Sporting Good, Leslie's Pool Supplies, Diamond Chevrolet Buick GMC, Holiday Inn Express & Suites, Hampton Inn & Suites and more.

Tri-Pointe Homes (previously known as Pardee) broke ground in 2018, kicking off the Atwell Community (Tri-Point Project), the City's largest residential development opportunity in 30 years. This 1,543-acre property began selling new homes in April 2020 and has welcomed more than 700 families of all sizes and has issued nearly 800 building permits for the project. The Atwell Homes Project features over 4,850 homes, two new schools, 3 commercial zoning areas, and community centers. KB Homes has submitted plan reviews for 143 homes. The Banning Duplex project is also in plan review for their 186-unit project. The 35,000 square foot Microtel project is currently at the grading permit process and expects to begin construction by June 2024. There is a population of 2.44 million within Riverside County. The City offers 23.24 square miles of Endless Opportunities with affordable land with potential for future expansion needs. According to the State of California Department of Finance, Banning saw its assessed property value increase by 1.9 percent from 2022 to 2023.

**Local Economy**  
Banning is one of the fastest growing cities in the State of California, with 31,250 highly skilled residents – and still growing, currently at a rate of 1.3 percent annually. Median household income as of 2022 was \$54,083 and per capita personal income increased 17.31 percent from \$24,679 in 2021 to \$28,951. The unemployment rate as of 2022 was 5.1 percent which is considered full employment. Population data from the California State Department of Finance, median and per capita income from US Census Bureau, and unemployment data from the California Employment Development Department. Additional information can be found in the statistical section of the ACFR.

## FACTORS AFFECTING FINANCIAL CONDITION

The City of Banning is a full-service municipal government, which owns and operates its own electric, water, and wastewater utilities. It also offers its residents an airport, local police protection, contracted fire protection, municipal bus service, seven parks, a swimming complex, a seasonally operated playhouse bowl, as well as youth and leisure programs. Recreation opportunities are also abundant in nearby areas, which offer golfing, fishing, hiking, and equestrian trails.

City has five elected council members. The Mayor is appointed by the City Council annually. The City Manager is the Chief Administrative Officer and is appointed by the City Council.  
Incorporated in 1913, Banning is a general law city with a council/manager type administration. The from Los Angeles to the Colorado River in 1862, where gold had been discovered. The railroad replaced the stagecoach in 1876.

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A budget process that is well integrated with the other activities of city government, such as the planning and management functions, will provide better financial and program decisions and lead to improved city operations. A budget process that involves all stakeholders (elected officials, city administrators, employees and their representatives, citizen groups, and business leaders) and reflects the needs and priorities of each, will serve as a positive force in maintaining good public relations and enhancing citizens' and other stakeholders' overall impression of city government.

While these processes and policies will not solve all the problems encountered in budgeting, a thoughtful and transparent process governed by clear financial and budgetary policies can enhance the quality of decision making by encouraging practices that illuminate the key issues and choices facing the community.

The council's work is important in emphasizing that budgeting should have a long-range perspective, and not simply an exercise in balancing revenues and expenditures one year at a time. Sound budget policies encourage governments to consider the longer-term consequences of their actions. All budget decisions need to be understood over a multi-year planning horizon to assess whether program and service levels can be sustained.

Of all the functional areas of city government finance, one of the most critical to success is budgeting. Budgeting has many dimensions: managerial, planning, communications, financial. A sound budget process encourages the development of organizational goals, establishes policies, and plans to achieve those goals, and allocates limited resources through the process that are consistent with these goals, policies, and plans. There is also a focus on measuring performance to determine what has been accomplished with the allocated resources.

### **Budget Process and Long-term Financial Planning**

The City of Banning is ready to accommodate business development needs with fast-track permit application processes for development and an ample Opportunity Zone. In addition, the City of Banning owns and operates our municipal utilities, which is helping to achieve the community's long-term goals. Local control means matching local resources to local needs and offering special programs (energy efficiency & conservation, economic development incentives, etc.) to benefit citizens. The primary mission of providing the least-cost and most reliable service over maximizing profit ensures that these goals are always in sight.

Banning is centrally located in Riverside County, with a large Opportunity Zone, and in the fast-growing Inland Empire region of Southern California, with proximity to Los Angeles, Orange, San Bernardino, and San Diego Counties. We are served by major transportation highways (I-10, SR-60, I-215, SR-79, and SR-91). Our excellent location allows easy access on and off the highway and to the Port of Long Beach, with air transportation served by Banning Municipal Airport, Palm Springs International Airport, and Ontario International Airport. In addition, we are a designated Foreign Trade Zone.

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- Revenue and expense assumptions upon which the budget is based.

Based on established budgetary policies, prior to July 1<sup>st</sup> of even numbered years, the City Manager, the Administrative Services Director, and the Deputy Finance Director, working with the directors of the various city departments present a biennial budget to the City Council for approval. During the budget cycle, two budgets are prepared, the operating budget and the capital budget for each of the respective fiscal years. The supporting budget documents provide the following:

**Yes-Minded** - Looks for solutions to problems and actively engages with co-workers, customers, and management to enhance the organization through innovation and collaboration.

organization and team goals ahead of personal goals.

**Dedicated** – Understands and supports the mission, vision, and values of the organization. Pursues

conducting the business of the public.

transparency, and conducts City-related business with integrity. Uses time at work for the purpose of

**Accountable** – Openly shares information with others, understands that public service requires

positively on the entire organization.

**Enthusiastic** – Approaches work with a positive attitude, active engagement and effort that reflects

courteous, non-confrontational and professional.

**Respectful** – Interactions with co-workers and customers will be conducted in a manner that is kind,

known as: **100 % R.E.A.D.Y.:**

When developing budget and fiscal policies, the City places emphasis on the following **CORE VALUES**

- Incorporates a long-term perspective.
- Establishes linkages to broad organizational goals.
- Focuses budget decisions on results and outcomes.
- Involves and promotes effective communication with stakeholders.
- Provides incentives to administration and employees.

Budgeting is guided by sound fiscal policy, and it is characterized by these essential principles:

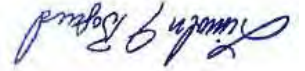
A good budget process is far more than the preparation of a legal document that appropriates funds for a series of line items. Adherence to adopted financial policies promotes sound financial management, can lead to improvement in bond ratings, lower cost of capital, and improve the city's financial stability by helping city officials plan fiscal strategy with a consistent approach. It reduces the impact of unexpected shortfalls which could lead to reductions of city services. It also provides assurance to the community that the city's financial resources are being utilized to bring value and maximize quality of life.



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Lincoln Bogard, Administrative Services Director & Deputy City Manager



Douglas Schulze, City Manager



Respectfully submitted,

A Certificate of achievement is valid for a period of one year only.

The City's Annual Comprehensive Financial Report and successful conclusion of Fiscal Year 2022-23 would not be possible without the dedicated and efficient services of the City's Finance Department and the assistance of all City Departments in providing the necessary data to prepare this report. In addition, City Staff truly appreciate the ongoing leadership and support of the Mayor and City Council.

## Awards and Acknowledgments

The Government Finance Officers Association of the United States and Canada (GFOA) awarded a Certificate of Achievement for Excellence in Financial Reporting (COA) to the City of Banning for its Annual Comprehensive Financial Report for the fiscal year ended June 30, 2022. That was the third consecutive year the City received this recognition. To be awarded a Certificate of Achievement, a government must publish an easily readable and efficiently organized Annual Comprehensive Financial Report. This report must satisfy both Generally Accepted Accounting Principles and applicable legal requirements.

The capital budget reflects the annual amount appropriated for each capital project included in the long-range Capital Improvement Program. When the council authorizes a new capital project, it approves the estimated total project cost and schedule. The approval of the project budget authorizes total expenditures over the duration of the construction project, which often spans multiple fiscal years. The biennial capital budget authorizes the anticipated expenditures for the scope of work anticipated to be completed in the upcoming fiscal year.

- Number of budgeted full-time equivalent (FTE) employees.
- Mission, strategic priorities, and impact of each operating department.
- Prior year actual, current year adopted budget, current year estimated actual, and new year recommended expenditures and revenues by department. The recommended budget will become the adopted budget upon Council approval.
- Descriptions of significant expenditure and revenue changes and related operational impacts by the department.

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Executive Director/CEO

*Christopher P. Morris*

June 30, 2022

For its Annual Comprehensive  
Financial Report  
For the Fiscal Year Ended

**City of Banning  
California**

Presented to

**Certificate of  
Achievement  
for Excellence  
in Financial  
Reporting**

Government Finance Officers Association





# Elected Officials

## City Council

Fiscal Year 22-23



Mayor  
Alberto Sanchez  
District 1



Mayor Pro Tem  
Colleen Wallace  
District 5



Council Member  
Renban Gonzales  
District 4



Council Member  
Sherri Flynn  
District 3



Council Member  
Rick Minjares  
District 2



City Treasurer  
Alejandro Geronimo



City Clerk  
Marie A. Calderon

# Executive Staff

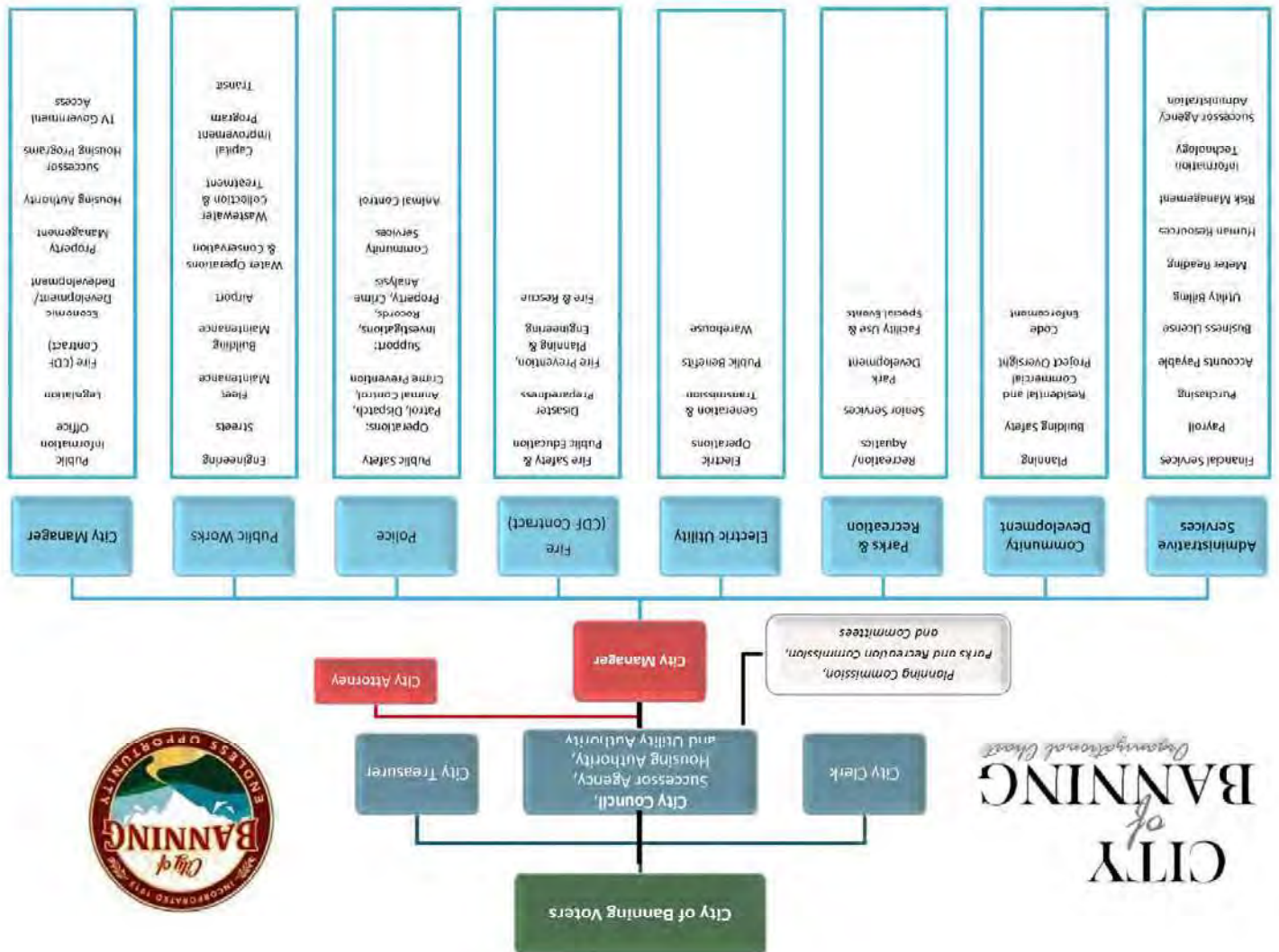
Douglas Schulze  
City Manager

Lincoln Bogard.....Administrative Services Director  
Arturo Vela.....Public Works Director  
Adam Rush.....Community Development Director  
Ralph Wright.....Parks & Recreation Director  
Thomas Miller.....Electric Utility Director  
Matthew Hammer.....Police Chief  
Todd Hopkins.....Division Chief (CalFire/Riverside County)



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Financial Section



## Independent Auditor's Report

To the Honorable Mayor and Members of the City Council  
City of Banning, California

### Report on the Audit of the Financial Statements

#### *Qualified and Unmodified Opinions*

We have audited the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Banning, California (the City), as of and for the year ended June 30, 2023, and the related notes to the financial statements, which collectively comprise the City's basic financial statements as listed in the table of contents.

#### *Qualified Opinions on Banning Utility Authority Water Fund, Electric Utility Fund, and Business-Type Activities*

In our opinion, except for the effects of the matter described in the Basis for Qualified and Unmodified Opinions section of our report, the accompanying financial statements referred to above present fairly, in all material respects, the respective financial position of Banning Utility Authority water fund, electric utility fund, and business-type activities of the City, as of June 30, 2023, and the changes in financial position, and where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

#### *Unmodified Opinions on Governmental Activities, General Fund, Banning Utility Authority Wastewater Fund, and Aggregate Remaining Fund Information*

In our opinion, the accompanying financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, general fund, Banning Utility Authority wastewater fund, and the aggregate remaining fund information of the City, as of June 30, 2023, and the respective changes in financial position and, where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

#### *Basis for Qualified and Unmodified Opinions*

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in *Government Auditing Standards*. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the City, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our qualified and unmodified audit opinions.

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#25663

***Matter Giving Rise to Qualified Opinions on Banning Utility Authority Water Fund, Electric Utility Fund, and Business-Type Activities***

We were not engaged as auditors of the City until after June 30, 2023, nor did the City perform a year-end inventory observation as of June 30, 2023. We were unable to satisfy ourselves by performing other auditing procedures concerning the inventory held at June 30, 2023. As the inventory balances are material to the Banning Utility Authority water fund, electric utility fund, and business-type activities, our opinion on each of these opinion units is qualified with respect to this matter.

***Adoption of New Accounting Standard***

As discussed in Note 1 to the financial statements, the City has adopted the provisions of Governmental Accounting Standards Board (GASB) Statement No. 96, *Subscription-Based Information Technology Arrangements (SBITAs)*, for the year ended June 30, 2023. There was no effect on beginning net position as a result of implementation. Our opinions are not modified with respect to this matter.

***Correction of Errors***

As discussed in Note 18 to the financial statements, certain errors resulting in a misstatement of amounts previously reported as of June 30, 2022, were discovered during the current year. Accordingly, a restatement has been made to the governmental activities net position, business-type activities net position, general fund balance, Banning Utility Authority water net position, electric utility net position, Banning Utility Authority wastewater net position, refuse utility net position, and private-purpose trust fund (Successor Agency of the Former RDA) net position as of July 1, 2022, to correct the errors. Our opinions are not modified with respect to that matter.

***Responsibilities of Management for the Financial Statements***

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the City's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

***Auditor's Responsibilities for the Audit of the Financial Statements***

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of



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Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, schedules of changes in the net pension liability, schedules of pension contributions, and schedule of changes in the total OPEB liability and related ratios as listed in the table of contents, be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with GAA5, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

#### ***Required Supplementary Information***

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

- Exercise professional judgment and maintain professional skepticism throughout the audit. Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the City's ability to continue as a going concern for a reasonable period of time.

In performing an audit in accordance with GAA5 and *Government Auditing Standards*, we:

internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.



### ***Supplementary Information***

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the City's basic financial statements. The combining and individual nonmajor fund financial statements and budgetary comparison schedules, are presented for purposes of additional analysis and are not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with GAAS. In our opinion, the combining and individual nonmajor fund financial statements and budgetary comparison schedules are fairly stated, in all material respects, in relation to the basic financial statements as a whole.

### ***Other Information***

Management is responsible for the other information included in the annual report. The other information comprises the introductory and statistical sections but does not include the basic financial statements and our auditor's report thereon. Our opinions on the basic financial statements do not cover the other information, and we do not express an opinion or any form of assurance thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the basic financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

### ***Other Reporting Required by Government Auditing Standards***

In accordance with *Government Auditing Standards*, we have also issued our report dated July 31, 2024, on our consideration of the City's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of City's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering City's internal control over financial reporting and compliance.



Rancho Cucamonga, California  
July 31, 2024



## MANAGEMENT'S DISCUSSION AND ANALYSIS

The management of the City of Banning (City) presents this narrative overview and analysis of the financial activities of the City for fiscal year ended June 30, 2023 (FY 2022-23). This discussion is intended to introduce the City's basic financial statements, as well as a financial comparison with the fiscal year ended June 30, 2022 (FY 2021-22).

City management encourages readers to consider the information presented within this discussion and analysis in conjunction with the City's financial statements. The City's financial statements are in adherence to the pronouncements of the Governmental Accounting Standards Board (GASB). This annual report consists of five (5) sections as arranged in the Table of Contents:

1. Independent Auditors' Report,
2. Management's Discussion and Analysis,
3. Basic Financial Statements,
4. Required Supplementary Information, and the
5. Combining and Individual Fund Statements and Schedules for Non-Major Governmental Funds, Non-Major Enterprise Funds, and Internal Service Funds.

Although the Combining Statements provide details about Non-Major Governmental Funds, Non-Major Enterprise Funds, and Internal Service Funds. The totals of non-major funds, governmental and proprietary, are summarized in the Basic Financial Statements as "Other Governmental Funds" and "Other Enterprise Funds." The total of Internal Service Funds is also brought forward.

The General Fund Budgetary Comparison Schedule is in section 4, Required Supplementary Information. Budgetary Comparison Schedules for each governmental fund are in section 5, Schedules for Non-Major Governmental Funds.

### FOCUS OF MANAGEMENT DISCUSSION AND ANALYSIS

The Management Discussion and Analysis will focus on financial information contained in section 3. Basic Financial Statements. Other key points from other sections may be included.

The Basic Financial Statements present operation and fiscal accountability measurements in the presentation order for Government-wide and Funds as required by Governmental Accounting Standards Board Statement 34 (GASB 34).

The two measurements differ in that Government-wide Statements report current and long-term activities on a full accrual basis of accounting, whereas Fund Statements report current year transactions on a modified accrual basis of accounting. The modified accrual basis of accounting uses the current financial resources measurement focus and measures whether the financial resources obtained during the accounting period are sufficient to cover claims against the fund during that

period. The differences of the reporting requirements illustrate short- versus long-term stability and helps to highlight areas of importance.

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### FRAMEWORK OF THE GOVERNMENTAL REPORTING MODEL

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Generally accepted accounting principles (GAAP) for governmental reporting requires the following:

- ❖ Government-Wide Financial Statements,
  - Operational accountability considers whether sufficient resources exist to cover the cost of providing services in the long term, i.e., the economic resource flows measurement focus, full accrual basis of accounting
    - Top level statements consolidate all City-wide activities in a two-column format
      - Governmental Activities
      - Business-Type Activities
    - Top level statements report City-wide activities in two statements
      - Statement of Net Position
      - Statement of Activities
- ❖ Reconciliation to convert Fund statements to Government-wide statements
  - Converts Governmental Funds to Governmental activities
  - Converts Proprietary Funds to Business-Type Activities
- ❖ Fund Financial Statements report fiscal accountability using the current financial resource flows measurement focus, modified accrual basis of accounting.
  - Types of funds
    - Governmental funds
    - Proprietary funds
  - Non-major Funds are reported in Combining Statements
  - Fiduciary Funds are not reported in Government-wide Financial Statements

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### NOTES TO FINANCIAL STATEMENTS

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Notes to Financial Statements, in the section Basic Financial Statements, provide additional information that is essential to the full understanding of the financial information contained therein.

In Note 1 of the Notes to Financial Statements, Summary of Significant Accounting Policies, there is further discussion as to the source of authoritative reporting requirements, the significance of those policies on the City's financial statements and provide additional supporting information as to the basis for the presentation formats of the Basic financial statements.

## PROCESSING THE FINANCIAL STATEMENTS

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Accounting information is internally processed in traditional City funds categorized as Governmental, Proprietary, or Fiduciary, based on the activity. Fund Financial Statements are prepared from the accounting information collected for each individual fund. Again, subsequent year-end adjustments are calculated to provide the reconciliations to arrive at Government-Wide Financial Statements.

Funds are classified as either major or non-major funds based on criteria established by GASB. Major funds are individually reported in the Funds Financial Statements. The non-major funds are individually reported in the section “Combining Fund Statements and Schedules”.

The traditional Fund Financial Statements focus on funds’ accounting of the city government that reflect the City’s accounting and budgetary structure. The City’s operations are accounted for in funds in much more detail. There are three (3) main fund categories; Governmental, Proprietary and Fiduciary. There are Fund Financial Statements for each main fund category, i.e., Governmental, Proprietary and Fiduciary. Within each of the reports, the report columns will provide each major fund and the total of non-major funds; the non-major funds are sub-totaled in columns entitled “Other Governmental Funds” and “Other Enterprise Funds”.

Since full accrual is the method of accounting for Proprietary Funds in the Funds Financial Statements, the reconciliations necessary to arrive at Business-Type Activities are not as extensive as for Governmental Funds which are accounted for using modified accrual accounting. Those reconciling items are included within the Proprietary Funds’ Statement of Net Position and Statement of Revenues, Expenses and Changes in Fund Net Position.

Reconciliations provide the necessary long-term adjustments to bridge the results of Governmental Funds and to convert them into Government-wide financial statements.

There are two reconciliations that convert Governmental Funds in the Funds Financial Statements to Governmental Activities in the Government-Wide Financial Statements. Those are a Reconciliation of the Balance Sheet of Governmental Funds to the Government-Wide, Governmental Activities, Statement of Net Position and the Reconciliation of the Statement of Revenues, Expenditures, and Changes in Fund Balances of Governmental Funds to the Statement of Activities. The two reconciliations provide the linkage from Governmental Funds’ operations to Governmental Activities in the Government-Wide Financial Statements.

1. Converts Governmental Funds to Governmental activities
  - a. Balance Sheet of Governmental Funds to Statement of Net Position
  - b. Statement of Revenues, Expenditures and Changes in Fund Balances to Statement of Activities
2. Converts Proprietary Funds to Business-Type Activities
  - a. Interfund Eliminations
  - b. Internal service fund adjustments related to Proprietary funds

The Government-Wide Financial Statements present “Governmental Activities” and “Business-Type Activities” in a two-column format resulting in Government-wide totals (City-wide). Governmental Activities are Governmental Fund totals and the reconciliation to full accrual. Similarly, the Business-Type Activities are the Proprietary Fund totals and their applicable reconciling items. The totals of these two types of City activities are the Government-wide totals.

## GOVERNMENT-WIDE FINANCIAL STATEMENTS

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### *REPORTING THE CITY AS A WHOLE*

Government-Wide Financial Statements provide both long-term and short-term information about the City's overall financial status in a manner similar to a private-sector business.

All City funds, as well as, the Banning Financing Authority, Banning Housing Authority, Banning Public Facilities Corporation, and the Banning Utility Authority are included. These component units, while legally separate from the City, provide services entirely or almost exclusively for the benefit of the City. Therefore, these component units are blended with the City government because of their governing structure and the relationship with the City.

As noted earlier, in this presentation, City operations are designated as either "Governmental Activities" or "Business-Type Activities", and reported under the designated columns, as identified in the Fund Financial Statements. "Reporting the City as a Whole" is the total of the two activities.

Key items affecting the City's Net Position are highlighted below.

### HIGHLIGHTS OF THE CITY AS A WHOLE

- ❖ As of June 30, 2023, the City's Net Position, which is the difference between the City's assets and deferred outflows of resources versus its liabilities and deferred inflows of resources, is at \$220.00 million, an increase of \$5.11 million including the impact of prior period adjustments, over June 30, 2022.
- ❖ At the close of the fiscal year, the Unrestricted portion of the Net Position, that which may be used to meet on-going obligations due to creditors, is \$21.45 million, a decrease of \$20.16 million from the prior fiscal year. The Net Investment in Capital Assets, another component of Net Position, was \$184.84 an increase of \$28.19 million over June 30, 2022. The Restricted portion of the Net Position amounted to \$13.71 million, a decrease of \$2.92 million over the prior fiscal year.
- ❖ GASB Statement No. 68 (Accounting and Financial Reporting for Pensions) and Statement No. 71 (Pension Transition for Contributions Made Subsequent to the Measurement Date) require that the Net Pension Liability be presented on the face of the financial statements. At June 30, 2023, the total Net Pension Liability for the City of Banning, government-wide, was \$49.69 million, an increase of \$19.17 million over the prior fiscal year.
- ❖ GASB Statement No. 75 (Accounting and Financial Reporting for Other Post-Employment Benefits (OPEB)) requires that the Total OPEB Liability be presented on the face of the financial statements, unless an OPEB trust exists. The City determined that an implicit subsidy exists in FY 2021-22, and we performed an actuarial study to determine the Total OPEB Liability. At June 30, 2023, the Total OPEB Liability for the City of Banning, government-wide, was \$1.11 million, an increase of \$0.05 million over the prior fiscal year.

### A COMPARATIVE SUMMARY OF CITY'S NET POSITION

Net Position represents the difference between the City's resources (total assets and deferred outflows of resources) and its obligations (total liabilities and deferred inflows of resources). Over time, Net Position may serve as an indication of a government's financial position. The Statement of Net Position measures the City's Net Position. This is one way to measure the City's financial health or financial position. Over time, increases or decreases in the City's Net Position may serve as an indicator of whether its financial health is improving or deteriorating.

All fluctuations are based on 2022 amounts which have not been restated for prior period adjustments. Therefore, all comparisons to the prior year are net of prior period adjustments.

Again, the City's Net Position, net expenses over revenues, increased by \$5.11 million to \$220.00 million from the prior fiscal year.

The City's Net Position from Governmental Activities is \$71.16 million, an increase of \$2.15 million, which was mainly due to charges for services increase of 41 percent, or \$3.00 million. Increases in General Government revenues were primarily from increases in Cost Allocation Plan payments for centralized administration services, partially offset by an increase in salaries and benefits, which reduced the General Government net loss by \$2.21 million to \$0.87 million. Public Safety net loss increased by \$2.03 million to \$16.46 million. This is primarily due to increases in contractual fire services payments of \$0.23 million, police salaries & benefits of \$0.29 million, vehicle purchases of \$0.36 million, and a reduction in Operating Contributions and Grants of \$1.59 million. The timing of receipts and disbursements for permits for Atwell homes and reimbursement-based grants for Community Development resulted in an increased net loss of \$2.88 million to \$4.19 million. Culture & Leisure expenditures increased \$0.47 million due to continued reinstatement of programming that had been suspended due to the Coronavirus pandemic. Transportation Operating and Capital Contributions and Grants decreased by \$0.25 million, and expenditures increased by \$0.79 million primarily due to a transfer to the Gas Tax Street Fund. The result is that discretionary non-designated revenues provided more support for services than last fiscal year and required additional use of governmental fund balances to cover the shortfalls. Beginning balance adjustments improved Net Position by \$10.79 million.

The City's Net Position from Business-Type Activities is \$148.84 million, an increase of \$2.95 million. Due to the City Council's decision to close the airport, Capital and Operating Contributions and Grants decreased by \$0.42 million resulting in a net loss of \$0.21 million, down from a net income of \$0.22 million in FY 2021-22. Transit expenses increased \$0.59 million primarily from salaries and benefits and fleet maintenance costs, with revenues unchanged for a net loss of \$0.51 million. Water net income decreased by \$0.31 million to \$6.51 million, primarily due to a reduction of Capital Contributions and Grants. Electric had a net loss of \$1.20 million, down from a net income of \$1.10 million, primarily due to increases in salaries and benefits (\$1.08 million), supplies and services (\$1.37 million), and purchased power costs (\$2.06 million), offset by an increase in sales and service charges of \$2.38 million. Wastewater's net income was \$1.88 million, up from \$1.40 million in FY 2021-22, which was primarily the result of a rate increase that increased charges for services income. Refuse net income fell \$3.89 million to \$0.58 million primarily due to a one-time revenue in FY 2021-22 upon contract signing for amendment to Waste Management agreement. In FY 2022-23, that \$4.5 million was reclassified as a deposit that will be recognized as revenue over 20 years. Non-operating revenues and transfers improved by \$0.18 million to a net loss of \$0.24 million. Beginning balance adjustments decreased Net Position by \$3.82 million.



### ASSETS AND DEFERRED OUTFLOWS

The City's Total Assets increased \$9.87 million to \$329.89 million primarily due to increases in grants receivables (\$2.21 million), inventory (\$1.88 million) and non-depreciable and depreciable capital assets net of accumulated depreciation (\$23.45 million), offset by decreases in cash and investments (\$18.14 million). Deferred outflows increased \$8.75 million to \$18.95 million primarily due to pension related items. Total Assets and Deferred outflows are \$348.84 million.

### LIABILITIES AND DEFERRED INFLOWS

The City's Total Liabilities increased \$22.44 million to \$124.14 million due primarily to increases in net pension liability (\$19.17 million), accrued liabilities (\$1.19 million), unearned revenue (\$4.83 million), primarily offset by decreases in deposits payable (\$0.80 million), and long-term liabilities (\$1.50 million). Deferred inflows decreased \$8.92 million to \$4.70 million due to pension related items. Total Liabilities and Deferred inflows are \$128.84 million.

### GASB 54 CLASSIFICATIONS OF NET POSITION

GASB 54 established a hierarchy of constraints applicable to the resources available in Fund Balances as well as the component of Net Position that corresponds to fund balances. The City's Net Position is made-up of three components: Net Investment in Capital Assets (net of related debt), Restricted, and Unrestricted.

Table 1 is a comparison of the Net Position in the Basic Financial Statements – Statement of Net Position with previous year. It includes both Changes in Net Position and any Restatements of Net Position. Corresponding analysis of changes and causes are reflected in the following paragraphs.

The *Net investment in Capital Assets* of \$184.84 million represents 84.02 percent of the City's Total Net Position. Investment in capital assets (e.g., infrastructure, land, structures and improvements, furniture, and equipment) for this purpose is reduced by unspent bond proceeds. The city uses these capital assets to provide services to citizens; consequently, these assets are not available for future spending. Although the City's investment in its capital assets is reported Net of Related Debt, it should be noted that the resources needed to repay this debt must be provided from other resources, since the capital assets themselves cannot be used to liquidate these liabilities. No new long-term debt was incurred during the current fiscal year that would have significantly affected this section. Any decrease, therefore, is mainly due to recurring annual debt service payments and depreciation of the capital assets offset by additional capitalized expenditures for fiscal year 2022-23.

The portion of the City's Net Position subject to *external restrictions* in how they may be used is \$13.71 million (6.23 percent of the Total Net Position). The Restricted Net Position includes Community Development Projects, Public Safety, Parks and Recreation, Public Works, Capital Projects, and Debt Service.

The remaining *Unrestricted Net Position* balance of \$21.45 million (9.75 percent of the Total Net Position) may be used to meet the government's ongoing obligations to citizens and creditors within program areas. The negative unrestricted net position in the Governmental Activities (\$18.81 million) is mainly the result of the implementation of GASB Statements No. 68 – Pensions, 71 – Pension Contributions Subsequent to The Measurement Date, and No. 75 – Other Post-Employment Benefits. Net Pension Liability for Governmental and Business Type Activities were \$33.85 million and \$15.84 million respectively. Total OPEB Liability, also respectively, was \$0.72 million and \$0.39 million. Additional information can be found in the Notes to Financial Statements.



Table 1 summarizes the Statement of Net Position of the City and provides a comparison.

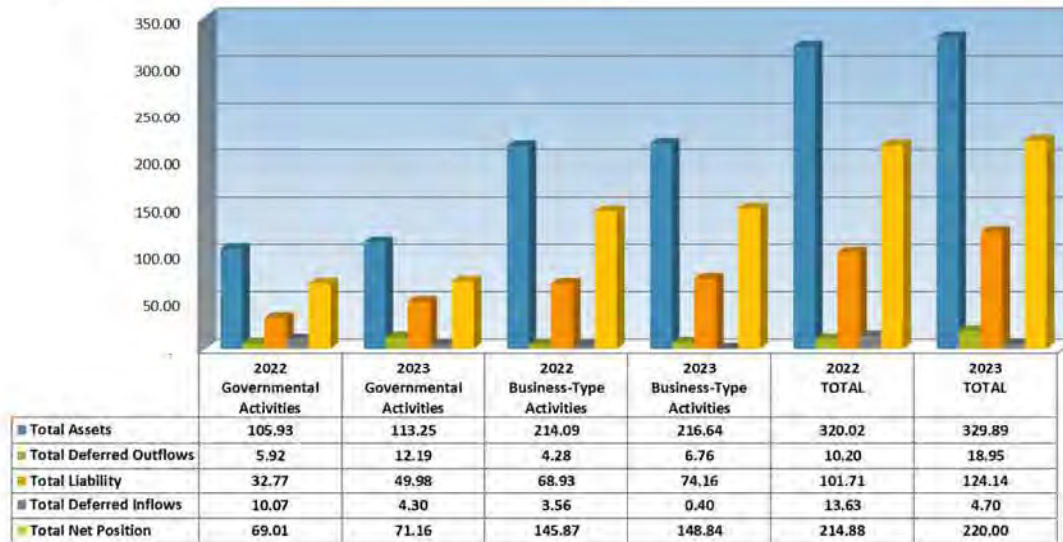
Table 1 - Summary of Net Position (In Millions)

	Governmental Activities		Business-Type Activities		Government-Wide Totals		% CHG
	2022 <sup>(1)</sup>	2023	2022 <sup>(1)</sup>	2023	2022 <sup>(1)</sup>	2023	
<b>Assets:</b>							
Current and other assets	35.25	31.24	79.00	69.43	114.25	100.67	11.9%
Capital assets	70.68	82.01	135.09	147.21	205.77	229.22	11.4%
<b>TOTAL ASSETS</b>	<b>\$ 105.93</b>	<b>\$ 113.25</b>	<b>\$ 214.09</b>	<b>\$ 216.64</b>	<b>\$ 320.02</b>	<b>\$ 329.89</b>	<b>3.1%</b>
Deferred outflows on refunding	-	-	2.43	2.26	2.43	2.26	7.0%
Deferred pension related items	5.90	12.20	1.83	4.45	7.73	16.65	115.4%
Deferred OBEF related items	0.02	(0.01)	0.02	0.05	0.04	0.04	0.0%
<b>TOTAL DEFERRED OUTFLOWS</b>	<b>\$ 5.92</b>	<b>\$ 12.19</b>	<b>\$ 4.28</b>	<b>\$ 6.76</b>	<b>\$ 10.20</b>	<b>\$ 18.95</b>	<b>85.8%</b>
<b>Liabilities:</b>							
Current and other liabilities	10.01	9.92	9.24	8.57	19.25	18.49	3.9%
Long-term liabilities*	22.76	40.06	59.69	65.59	82.45	105.65	28.1%
<b>TOTAL LIABILITIES</b>	<b>\$ 32.77</b>	<b>\$ 49.98</b>	<b>\$ 68.93</b>	<b>\$ 74.16</b>	<b>\$ 101.70</b>	<b>\$ 124.14</b>	<b>22.1%</b>
Deferred inflows on refunding	-	-	0.09	0.09	0.09	0.09	0.0%
Deferred pension related items	10.07	4.26	3.47	0.24	13.54	4.50	66.8%
Deferred OPEB related items	-	0.04	-	0.07	-	0.11	0.0%
<b>TOTAL DEFERRED INFLOWS</b>	<b>\$ 10.07</b>	<b>\$ 4.30</b>	<b>\$ 3.56</b>	<b>\$ 0.40</b>	<b>\$ 13.63</b>	<b>\$ 4.70</b>	<b>65.5%</b>
<b>Net Position:</b>							
Net investment in capital assets	70.29	80.58	86.36	104.26	156.65	184.84	18.0%
Restricted for:							
Community Development Projects	2.58	2.42	-	-	2.58	2.42	6.2%
Public Safety	0.02	0.02	-	-	0.02	0.02	0.0%
Culture and Leisure	0.08	0.09	-	-	0.08	0.09	12.5%
Transportation	2.29	2.82	-	-	2.29	2.82	23.1%
Capital Projects	4.24	4.04	3.53	0.36	7.77	4.40	43.4%
Debt Service	-	-	-	-	-	-	0.0%
SCPPA Projects	-	-	0.98	0.78	0.98	0.78	20.4%
SCPPA Project Stabilization Fund	-	-	2.91	3.18	2.91	3.18	9.3%
Unrestricted	(10.49)	(18.81)	52.10	40.26	41.61	21.45	48.4%
<b>TOTAL NET POSITION</b>	<b>\$ 69.01</b>	<b>\$ 71.16</b>	<b>\$ 145.88</b>	<b>\$ 148.84</b>	<b>\$ 214.88</b>	<b>\$ 220.00</b>	<b>2.4%</b>

Note: Details can be found in the "Statement of Net Position"

<sup>(1)</sup> Amounts reported for 2022 have not been restated.

Chart 1 – provides a visual summary of the information presented in Table 1.



Note: Details can be found in the "Statement of Net Position"  
Amounts reported for 2022 have not been restated.

## STATEMENT OF ACTIVITIES

Table 2 is a two-year comparison of the Governmental and Business-Type Activities in the Statement of Activities. Comparisons are provided for City-wide Revenues and Expenses by Function/Program, the Change in City-wide Net Position, and the Beginning and Ending Net Position.

Table 2 - Statement of Activities (In Millions)

	Governmental Activities		Business-Type Activities		Government-Wide Totals	
	2022 <sup>(1)</sup>	2023	2022 <sup>(1)</sup>	2023	2022 <sup>(1)</sup>	2023
<b>Revenues</b>						
<b>Program Revenues:</b>						
Charges for Services	7.33	10.33	50.58	49.74	57.91	60.07
Operating Contributions and Grants	4.99	4.65	3.89	1.71	8.88	6.36
Capital Contributions and Grants	2.82	3.06	4.93	8.74	7.75	11.80
Subtotal Program Revenues	15.14	18.04	59.40	60.19	74.54	78.23
<b>General Revenues:</b>						
Property Taxes	6.55	6.94	-	-	6.55	6.94
Sales Taxes	6.80	5.79	-	-	6.80	5.79
Business Licenses Taxes	0.18	0.18	-	-	0.18	0.18
Franchise Taxes	0.53	0.54	-	-	0.54	0.54
Transient Occupancy Taxes	1.29	1.18	-	-	1.29	1.18
Other Taxes	0.67	0.70	-	-	0.67	0.70
Motor Vehicle In-Lieu	0.04	-	-	-	0.04	-
Use of Money and Property	(0.16)	0.32	(0.45)	0.80	(0.61)	1.11
Other	0.01	1.13	-	0.13	0.01	1.26
Gain on sale of capital asset	-	-	0.03	-	0.03	-
Subtotal General Revenues	15.91	16.78	(0.42)	0.93	15.50	17.70
<b>TOTAL REVENUES</b>	<b>31.05</b>	<b>34.82</b>	<b>58.98</b>	<b>61.12</b>	<b>90.04</b>	<b>95.93</b>
<b>Expenses</b>						
General Government	5.94	7.74	-	-	5.94	7.74
Public Safety	17.68	18.53	-	-	17.68	18.53
Community Development	5.21	8.79	-	-	5.21	8.79
Culture and Leisure	2.21	2.64	-	-	2.21	2.64
Transportation	6.08	6.86	-	-	6.08	6.86
Interest on Long-term debt	0.01	0.07	-	-	0.01	0.07
Airport	-	-	0.47	0.44	0.47	0.44
Transit	-	-	1.77	2.36	1.77	2.36
Electric Utility	-	-	30.46	36.03	30.46	36.03
BUA Water	-	-	8.12	9.96	8.12	9.96
BUA Wastewater	-	-	3.51	3.87	3.51	3.87
Refuse	-	-	1.05	0.51	1.05	0.51
<b>TOTAL EXPENSES</b>	<b>37.13</b>	<b>44.63</b>	<b>45.38</b>	<b>53.17</b>	<b>82.51</b>	<b>97.80</b>
<b>Increase/(Decrease) in Net Position</b>						
Before Transfers	(6.08)	(9.81)	13.60	7.95	7.52	(1.87)
Transfers	0.61	1.17	(0.61)	(1.17)	-	-
<b>Increase/(Decrease) in Net Position</b>	<b>(5.47)</b>	<b>(8.64)</b>	<b>12.99</b>	<b>6.78</b>	<b>7.52</b>	<b>(1.87)</b>
<b>Net Position at Beginning of Year</b>	<b>74.48</b>	<b>69.01</b>	<b>132.89</b>	<b>145.88</b>	<b>207.37</b>	<b>214.89</b>
<b>Restatement of Net Position</b>	<b>-</b>	<b>10.79</b>	<b>-</b>	<b>(3.82)</b>	<b>-</b>	<b>6.98</b>
<b>Net Position at End of Year</b>	<b>69.01</b>	<b>71.16</b>	<b>145.88</b>	<b>148.84</b>	<b>214.89</b>	<b>220.00</b>

Note: Details can be found in the "Statement of Activities"

<sup>(1)</sup> Amounts reported for 2022 have not been restated.

## **GOVERNMENT-WIDE REVENUES AND EXPENSES**

In the following two paragraphs, refer to Table 2 for Government-wide Revenues and Expenses. Net Revenues over Expenses decreased the City's Net Position by \$(1.87) million before restatements.

The total Government-Wide revenues for fiscal year 2022-23 were \$95.93 million, \$34.82 million from Governmental Activities, and \$61.12 million from Business-Type Activities. City-wide total revenues increased by \$5.89 million, or 6.54 percent from the prior year.

Total Government-Wide expenses for fiscal year 2022-23 are \$97.80 million, an increase of \$15.29 million or 18.52 percent year-over-year. City-wide total expenses supporting Governmental Activities were \$44.63 million, a 20.20 percent increase from the prior year, and Business-Type Activities, \$53.17 million, or a 17.14 percent increase year-over-year.

## **GOVERNMENTAL ACTIVITIES**

Net Position for Governmental Activities is \$71.16 million (after restatements), an increase of \$2.15 million or 3.12 percent from the previous year.

## **REVENUES**

Total Revenues for Governmental Activities were \$34.82 million.

Charges for Services amounted to \$10.33 million for the current fiscal year, which represents approximately 29.67 percent of the total revenues in the Governmental Activities category. This is an increase of \$3.00 million from the last fiscal year, which is primarily from increases in Cost Allocation Plan payments for centralized administration services.

Revenues from overall tax sources totaled \$15.33 million, which is a decrease of 4.31 percent year-over-year. The two largest taxes sources were Property Taxes and Sales Taxes, \$6.94 million and \$5.79 million, respectively. In comparison to prior fiscal year levels, Property Taxes moderately increased 5.95 percent from \$6.55 million, which can be attributed to new residential construction and an increase in assessed property values, assessed value increases from changes of ownership during 2022, and Proposition 8 Recaptures. Compared to last year, Sales Taxes decreased 14.85 percent from \$6.80 million due primarily to inflationary pressures that impacted prices and slowed consumer demand for non-essential goods, supplies, and services.

Other General Revenues rose to \$1.26 million this fiscal year from a negative \$0.11 million for the previous fiscal year. This is due to the impact of the American Rescue Plan Act funding received this fiscal year to offset public safety salaries and a positive return on investments due to the higher interest rate environment.

## **EXPENSES**

Total Expenses for Governmental Activities were \$44.63 million.

Governmental Activities expenses increased by 20.20 percent or \$7.50 million over last year. The breakdown by governmental activity follows; General Government expenses increased 30.30 percent or \$1.80 million due to cost-of-living and classification and compensation adjustments to salaries as well as the addition of new positions for the new Opportunity Village (one manager and four staff), plus refilling vacancies such as the Communications Manager position and Human Resources Technician. Public Safety increased 4.81 percent or \$0.85 million due to significant overtime pay due to staffing shortages, plus increases in salaries to retain employees, vehicle purchases, and fire services contract costs. Community Development increased 68.71 percent or \$3.58 million due to